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IN THE

Supreme Court of the United States

OCTOBER TERM 1969

No. 1136

DEBORAH A. NORTHCROSS, *et al.*,

Petitioners,

v.

BOARD OF EDUCATION OF
THE MEMPHIS, TENNESSEE CITY SCHOOLS,

Respondents.

MOTION TO ADVANCE AND PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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BOARD OF EDUCATION OF
THE MEMPHIS, TENNESSEE CITY SCHOOLS,

Respondents.

MOTION TO ADVANCE

Petitioners, by their undersigned counsel, respectfully move that the Court advance its consideration and disposition of this case, which presents issues of national importance about which the court below and other United States Courts of Appeals are divided in their interpretation of *Alexander* v. *Holmes County Bd. of Educ.*, 396 U.S. 19 (1969) and *Carter* v. *West Feliciana Parish School Bd.*, No. 944 O.T. 1969 (January 14, 1970). These issues require prompt resolution by this Court for the reasons stated in the annexed Petition for Writ of Certiorari.

WHEREFORE, petitioners pray that the Court:

1. Consider this motion immediately;

2. shorten the time for filing respondents' response to the annexed petition and

3. consider the annexed petition at the Court's conference of February 20, 1970.

Respectfully submitted,

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No. .....

Deborah A. Northcross, *et al.*,

Petitioners,

v.

Board of Education of
the Memphis, Tennessee City Schools,

Respondents:

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in this case on December 19, 1969.

Opinions Below

The orders of the United States Court of Appeals for the Sixth Circuit remanding the cause to the district court and denying petitioners' Motion for Injunction Pending Certiorari, of which review is sought, are unreported and are reproduced in the Appendix, *infra* at pp.1a-8a. The opinion of the United States District Court for the Western District of Tennessee is unreported and is also reproduced in the Appendix, *infra* at pp. 9a-23a.

Prior reported opinions in this matter are found at 302 F.2d 818 (6th Cir.), *cert. denied*, 370 U.S. 944 (1962) and 333 F.2d 661 (6th Cir. 1964).

Jurisdiction

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1). The judgment of the Court of Appeals was entered December 19, 1969 (*infra* at 4a).

Questions Presented

1. In light of the decisions of this Court in *Alexander* v. *Holmes County Bd. of Educ.*, 396 U.S. 19 (1969) and *Carter* v. *West Feliciana Parish School Bd.*, No. 944 O.T. 1969 (January 14, 1970), did the Sixth Circuit err in failing to require prompt action during the current school year to eliminate the dual school system?

2. Did the Sixth Circuit err in determining that the Memphis system, in which 93% of the Negro pupils still attend racially identifiable schools (all-Negro or enrolling 90% or more Negro pupils), was a unitary school system meeting the requirements of this Court's decisions in *Brown* v. *Board of Educ.*, 347 U.S. 483 (1954); 349 U.S. 294 (1955); *Green* v. *County School Bd. of New Kent County*, 391 U.S. 430 (1968); *Alexander* and *Carter*?

Constitutional Provision Involved

This case involves the Equal Protection Clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Statement

History of the Litigation

Suit was originally filed under 28 U.S.C. §1343 and 42 U.S.C. §1983 to desegregate the Memphis City schools on March 31, 1960; the district court denied injunctive relief and upheld the Tennessee Pupil Assignment Law. On appeal, the Sixth Circuit reversed, with instructions to the district court "to restrain the defendants from operating a biracial school system in Memphis, or in the alternative to adopt a plan looking towards the reorganization of the schools in accordance with the Constitution of the United States." *Northcross* v. *Board of Educ. of Memphis*, 302 F.2d 818, 824 (6th Cir.), *cert. denied*, 370 U.S. 944 (1962).

On remand, the school district submitted, and the district court approved, a stair-step[1] plan incorporating geographic zoning and minority-to-majority transfers.[2] On appeal, the Sixth Circuit invalidated the minority-to-majority transfer feature and directed close scrutiny of all zone lines because it found substantial evidence that the boundaries approved by the district court had been "gerrymandered to preserve a maximum amount of segregation." *Northcross* v. *Board of Educ. of Memphis*, 333 F.2d 661, 663 (1964).

May 13, 1966, petitioners filed a Motion for Further Relief seeking the adoption of a new desegregation plan. A modified plan incorporating minimal zone changes[3] and unrestricted transfers was submitted by the respondents July 26

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[1] The original plan of desegregation affected grades 1-3 for the school year beginning September, 1962. Grade 4 was to be desegregated during the 1963-64 school year and one additional grade per year thereafter. The Sixth Circuit ordered the pace accelerated to desegregate junior high school grades in September, 1965 and senior high schools in the fall of 1966. 333 F.2d at 665.

[2] See *Goss* v. *Board of Educ. of Knoxville*, 373 U.S. 683 (1963).

[3] On May 15, 1969, the district court ruled that these same zones "are in need of revision for many purposes including further desegregation where feasible." (*Infra* p. 18a).

and approved by the district court without hearing July 29, 1966. The court made no ruling upon petitioners' Motion for Further Relief. A second Motion for Further Relief, based in part upon *Green* v. *County School Bd. of New Kent County*, 391 U.S. 430 (1968), was filed July 26, 1968, seeking (1) cancellation of all transfers which reduce desegregation in the school system,[4] (2) complete faculty desegregation, (3) a survey of the location of facilities, pupils, etc. with a complete report thereon submitted to the district court, (4) adoption of a new plan of desegregaton, prepared with the assistance of the Title IV Desegregation Center of the University of Tennessee, and based on unitary geographic zones, consolidation of schools or pairing, but without an unrestricted free transfer. The present proceedings arise from an appeal of the district court's May 23, 1969 ruling on the *Green* motion.

The Memphis School System

The Memphis school district lies but four miles north of the Mississippi state line in Shelby County, Tennessee.[5] The district operates some 149 schools; 92 of those schools are more than 90% white or 90% Negro:

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[4] *Compare Monroe* v. *Board of Comm'rs of Jackson*, 391 U.S. 450 (1968). Under the Memphis free transfer provision during the 1968-69 school year, 378 white students transferred from desegregated schools to all-white or heavily white schools; 563 white students transferred from all-Negro or predominantly Negro schools to all white or heavily white schools; and 526 Negro students transferred from predominantly white desegregated schools to predominantly Negro or all-Negro schools. (See *Transfer Report* for 1968-69, filed by respondents August 14, 1968).

[5] Shelby County is contiguous with Marshall County, Mississippi, where this Court on January 14, 1970 ordered complete desegregation of pupils and faculty no later than February 1, 1970. *Carter* v. *West Feliciana Parish School Bd.*, No. 944, O.T. 1969. In 1968-69 in Holly Springs (Marshall County), Mississippi, 3.2% of that district's Negro pupils attended predominantly white schools. *Anthony* v. *Marshall County Bd. of Educ.*, 409 F.2d 1287, 1288 (5th Cir. 1969). The comparable percentage in Memphis during 1968-69 was 2.7%. See text *infra*.

> [A]s of the current school year, 1968-69, there are presently thirty-five [35] all-white schools, fifty [50] all-Negro schools, forty-seven [47] predominantly white schools and seventeen [17] predominantly Negro schools.[6]

(*Infra*, p. 10a). Of the 66,555 Negro pupils in the system at the time of the February, 1969 hearing on the *Green* motion, only 1,842 (or 2.7%) attended schools where white students predominated; only 1,258 (2.2%) of Memphis' 57,707 white students attended predominantly Negro schools (Trial Exhibit No. 27, reprinted in the Appendix to the Motion for Summary Reversal). Statistics filed by respondents with the Sixth Circuit prior to the oral argument (*infra* at pp. 24a-31a) show little change during 1969-70. Of 70,925 Negro students in elementary, junior high and high schools, only 2,601 (3.5%) attend predominantly white schools; 49,821 (70.2%) attend all-Negro schools; and 65,967 (93%) attend schools which are more than 90% Negro. Meanwhile, the number of white students attending predominantly Negro schools has declined to 859 (1.4%) of the total 60,005 white students.

The District Court Ruling

Following the filing of the *Green* Motion July 26, 1968, the district court on August 23, 1968 declined to order any relief for the 1968-69 school year because of the imminent reopening of school.[7] No hearing on the motion was sched-

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[6] In 1960 there were 79, as compared with the present 72 all-white or predominantly white schools; and 44, as compared with the present 50 all-Negro and 17 predominantly Negro schools, in the Memphis system. *Northcross* v. *Board of Educ. of Memphis*, 302 F.2d 818, 820 (6th Cir. 1962).

[7] The district court deferred ordering the facilities and pupil surveys requested in the Motion for Further Relief pending receipt of briefs from respondents in support of their argument that *Green* was inapplicable. Hearings were held November 8 and 11, 1968

uled until after the survey report (see note 7) was filed by respondents on December 23, 1968. Thereafter, hearings were held from February 6-11, 1969; the district court's opinion rendered May 15, 1969, and a formal order entered May 23, 1969.

The district court held that "the existing and proposed plans do not have real prospects for dismantling the state-imposed dual system at the 'earliest practicable date'." (*Infra*, p. 18a). Nevertheless, the district court declined to void the free transfer system, even though respondents frankly admitted that they wished to retain free transfers to permit students to avoid integration if they wished to do so.[8] The court continued, "[t]he zones are in need of revi-

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to determine whether respondents should be required to make the surveys. On November 21, 1968, the district court ordered the studies to be undertaken and a report thereon filed within 45 days.

[8] See the Memorandum of Points and Authorities submitted by respondents to the district court and reprinted in the Appendix to petitioners' Motion for Summary Reversal. Trial Exhibit 6, also reprinted in that Appendix, demonstrates that this is exactly how the free transfers work. The following table depicts some examples:

Zone	*Whites Living in Zone*	*Whites Attending School in Zone*
Getwell Elementary	47	0
Gordon Elementary	130	33
Grant Elementary	51	0
Rozelle Elementary	217	98
Springdale Elementary	93	7
Vollentine Elementary	275	195
Corry Junior High	19	0
Humes Junior High	289	193
Riverview Junior High	36	0
Northside High	124	63
Melrose High	47	0

	Negroes Living in Zone	*Negroes Attending School in Zone*
Cherokee Elementary	274	151

(All students not attending school within their zones attend other *Memphis public schools*). (E.g., Tr. 408)

sion for many purposes, including further desegregation where feasible" (*infra*, at p. 18a).[9] Revised zone boundary

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[9] In 1964 the Court of Appeals pointed out two "obvious" examples of zones "gerrymandered to preserve a maximum amount of segregation": Klondike [Negro] and Vollentine [white] elementary school zones (which have a mutual boundary). *Northcross* v. *Board of Educ. of Memphis*, 333 F.2d at 663 (1964). Since that time no changes have been made in the zones (Tr. 374) and no white students attend the Klondike school.

Most zone boundaries between identifiably white and Negro school zones correspond directly to the racial distribution of the city's population (school boundary lines drawn by respondents follow historic boundary lines between white and Negro neighborhoods without regard to natural boundaries, capacities of schools, or any other criteria except race). (Tr. 40 et seq.) *Cf. Henry* v. *Clarksdale Municipal Separate School Dist.*, 409 F.2d 682, 687 (5th Cir.), *cert. denied*, 396 U.S. 940 (1969). (See Trial exhibits 7, 8, 9, 15, 16, 17 and 18). Examples are as numerous as they are flagrant.

For example, the Central High School zone [89% white] is bounded as follows: on the south by Hamilton [all-Negro] and Melrose [all-Negro]; on the west by Washington [all-Negro] and Northside [95% Negro]; on the north by Douglass [all-Negro]; and on the east by Lester [all-Negro]. The Central zone lines have no rational basis other than race. The zone is bisected by the following "natural" obstacles—in the north by the L & N railroad tracks and also by North Parkway, a major thoroughfare; in the south by the Union Pacific and L & N railroad tracks; in the west by Interstate Highway 255; and in the east by East Parkway, a major thoroughfare.

Another example is the Messick High School zone [99% white] which is bounded on the west by the Melrose High School zone [all-Negro]. The boundary separating these two zones is an irrational and jagged line which follows exactly the easternmost edge of a Negro neighborhood.

The elementary and junior high maps are also replete with similar examples of racial gerrymandering. The district court opinion (*infra* at p. 15a) notes "some glaring islands";

> For example, Carpenter Elementary, grades 1-3, and Lester Elementary, Junior High and High Schools have a total of 2396 students, all Negro. Treadwell and East High Schools have grades 1 through 12 and are immediately adjacent to the Lester-Carpenter zone. Treadwell has 2884 whites and 8 Negroes. East has 1866 white students and 19 Negroes. The defendants point out that the Lester-Carpenter "island" zone boundaries are necessary because of industrial and commercial

lines together with enrollment projections were to be filed January 1, 1970. The district court denied petitioners' prayer for an injunction restraining any further school construction until new zone lines were formulated and approved, and required only a 20% system-wide assignment of faculty across racial lines for 1969-70.

The Rulings of the Court of Appeals

June 13, 1968, petitioners filed with the United States Court of Appeals for the Sixth Circuit, a Motion for Summary Reversal of the district court's judgment. June 18, 1968, the Court of Appeals declined to consider the motion until the complete transcript of testimony was filed. The court reporter thereafter advised the Court of Appeals, upon instruction of the district judge and at the request of petitioners' counsel, that the transcript could not be prepared until September. A second motion renewing petitioners' request that the Court of Appeals proceed on the basis of the printed Appendix supplied with the motion and the exhibits forwarded from the district court was likewise denied by the Court of Appeals, although a major ground relied upon for summary reversal was the district court's failure to require new zone lines to be effectuated for 1969-70 after finding in May, 1969 that "the existing and proposed plans do not have real prospects for dismantling the state-imposed dual system at the 'earliest practicable date'" (*infra* at p. 18a).

Following this Court's decision in *Alexander* v. *Holmes County Bd. of Educ.*, 396 U.S. 19 (1969), petitioners filed with the Court of Appeals on November 3, 1969, a Motion to Require Adoption of a Unitary System Now (reprinted

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barriers, major thoroughfares and railroad tracks. The plaintiffs point out that these same tracks bisect other zones in other parts of the city.

at pp. 32a-35a *infra*). November 13, 1969, petitioners filed a Motion to Convene an Emergency Panel of the Sixth Circuit (reprinted at pp. 36a-38a *infra*) to hear and determine the *Alexander* motion. The following day, the transcript was received by the Court of Appeals; the convening of an emergency panel was denied and the *Alexander* motion passed for consideration by the regular panel of the Court which would hear the appeal, which was then calendared for argument December 17, 1969.

Following oral argument, the judgment of the Court of Appeals was issued December 19, 1969, remanding the case to the district court for further consideration of the Motion for Further Relief and the "plan"[10] or any amendment thereto to be presented to the district court as required by its order of May 23, 1969:

> It appears to this Court that the imminence of the presentation and consideration by the District Judge of the proposed plan to be submitted on or before January 1, 1970, suggests the impracticality of this Court attempting to consider *precipitously* the various claims asserted by plaintiffs-appellants in their appeal and motions. This Court has been familiar with the problems of desegregation in the schools of the City of Memphis since 1962, when it had before it the first judgment commanding desegregation, entered by the District Court on May 2, 1961. From review of this litigation and its underlying factual situation, it is satisfied that there is no need at this time for *precititous* [sic] action. Therefore, no further order need be entered in this Court until the United States District Court has had

[10] The district court did not require submission of a new plan, but merely revised zone boundary lines together with enrollment projections. It further did not call for any changes to be made until the 1970-71 school year.

> submitted to it the ordered plan, and has had opportunity to consider and act upon it. (*Infra*, p. 3a) (emphasis supplied).

Petitioners then filed a Motion for Injunction Pending Certiorari, praying that the Court of Appeals, pursuant to *Alexander* and to the December 13, 1969 order of this Court granting temporary relief in *Carter*, direct the district court to implement changes during the second semester of the current school year. January 12, 1970, the Court of Appeals denied the Motion for Injunction:

> Appellants support their motion with citation of authorities which they assert require the action they ask us to take, viz: *Alexander* v. *Holmes* [County] *Board of Education*, 398 U.S. 19; *Carter* v. *West Feliciana Parish School Board No. 944*, —— U.S. ——, December 13, 1969, 38 U.S.L. Week 3220; *Singleton* v. *Jackson Municipal Separate School District*, —— F(2) —— (5th Cir. 1969, No. 26,285); *Nesbit* v. *The Statesville City Board of Education*, —— F(2) —— (4th Cir. 1969, No. 13,229).
>
> To the extent that the relevant factual context of the above cases is disclosed by the opinions available to us, we conclude that they are not analogous to the case before us. We are satisfied that the respondent Board of Education of Memphis is not now operating a "dual school system" and has, subject to complying with the present commands of the District Judge, converted its pre-Brown dual system into a unitary system "within

which no person is to be effectively excluded because of race or color." (*Infra* at pp. 6a-7a).[11]

[11] *Compare* the findings of fact made by the district judge (*infra* at p. 18a):

> In this cause the Court finds that the defendant Board has acted in good faith as it interpreted its burden to desegregate the schools in its system. However, the existing and proposed plans do not have real prospects for dismantling the state-imposed dual system at the "earliest practicable date."
>
> . . .
>
> In dismantling the former state-imposed dual system at the earliest practicable date the Board should undertake to remove racial discrimination in all schools, not just the schools in the inner city.
>
> . . .
>
> The zones are in need of revision for many purposes including further desegregation where feasible.

REASONS FOR GRANTING THE WRIT

I.

The Failure of the Court of Appeals to Require any Action to Eliminate the Dual School System During the Current School Year Conflicts With This Court's Requirement in *Alexander* and *Carter* That Every School District Terminate Dual School Systems at Once and Operate Now and Hereafter Only Unitary Schools.

A. The Decision of the Court of Appeals Remanding the Case to the District Court With the Specific Direction That There Was No Need for Precipitous Action Conflicts With This Court's Decision in *Alexander* and *Carter*.

In *Alexander* and *Carter* this Court refused to permit delays in the complete conversion of school districts in Mississippi, Alabama, Georgia, Florida and Louisiana into unitary systems. One of the cases included in the *Carter* decision involved Marshall County, Mississippi, which adjoins the county in which the Memphis school system is located. As in *Alexander*, "the question presented is one of paramount importance involving as it does the denial of fundamental rights to many thousands of school children who are presently attending [Memphis, Tennessee] schools under segregated conditions contrary to the applicable decisions of this Court. . . ." But by accident of geography, this case falls within the jurisdiction of the Sixth Circuit Court of Appeals.

The rule in the Sixth Circuit for Memphis is "go slow." The district court is told he should not act "precipitously" in deciding the case. The rule is stated in the face of this Court's most recent decisions. The practice is far worse.

The *Green* motion filed in June of 1968 was not decided by the district court for almost a year and the denial by the Sixth Circuit of a hearing in a manner permitted by Rule 30(f) of the Federal Rules of Appellate Procedure for an additional six months makes a mockery out of the grant of Constitutional rights to Negro children. In *Green* v. *County School Board*, 391 U.S. 430 (1968) this Court spoke of such delay.

> Such delays are no longer tolerable, for "the governing constitutional principles no longer bear the imprint of newly enunciated doctrine." *Watson* v. *City of Memphis*, 373 U.S. 527 at 529.

The Sixth Circuit in its December 19, 1969 order made no mention of this Court's decision in *Alexander, supra*, despite petitioners' *Alexander* motion and their Reply Brief, which also fully discussed this Court's December 13, 1969 order in *Carter* v. *West Feliciana Parish School Bd.* and the ruling of the Fourth Circuit in *Nesbit* v. *Statesville City Bd. of Educ.*, No. 13,292 (December 2, 1969) (*en banc*).

If the practice and procedure followed in this cause is considered in the context of the Sixth Circuit's decision that there should be no precipitous action, it will put the district court below and all other district courts in the Sixth Circuit in the impossible situation of choosing between (1) the clear and precise decisions from this Court establishing the *pendente lite* relief principle for school desegregation cases and requiring that such cases proceed on an expedited basis in *all* courts without formalistic and technical delays which have the effect, as here, of a denial of relief, and (2) the *subsequent* decision of the Sixth Circuit Court of Appeals to the opposite effect. This is a case where there is no dispute that segregation was a

requirement of Tennessee state law and where the school district in question is less than four miles from another school district (Marshall County, Mississippi) in which this Court on January 14, 1970 ordered an end to all delay and the full desegregation of faculty and pupils no later than February 1, 1970.

B. The Conflict Between the Decision of the Sixth Circuit and Decisions of the Fourth, Fifth and Eighth Circuits Implementing *Alexander* Mandates Review by This Court.

On December 2, 1969 the Court of Appeals for the Fourth Circuit, sitting *en banc*, unanimously arrived at an interpretation of this Court's decision in *Alexander* which conflicts squarely with the interpretation and actions of the Court below. In *Nesbit* v. *Statesville City Bd. of Educ.*, No. 13,292 (December 2, 1969), the Fourth Circuit ordered school districts to submit unitary plans by December 8, 1969 for complete implementation no later than January 31, 1970.

> The clear mandate of the [Supreme] Court is immediacy. Further delays will not be tolerated in this Circuit. [Slip opinion at p. 2].

On January 19, 1970, that Circuit in *Stanley* v. *Darlington County School Dist.*, No. 13,904, reaffirmed its *Nesbit* holding and, citing this Court's January 14, 1970 holding in *Carter*, said:

> These decisions leave us with no discretion to consider delays in pupil integregation until September 1970. Whatever the state of progress in a particular school district and whatever the disruption which will be occasioned by the immediate reassignment of teachers and pupils in mid-year, there remains no judicial discretion to postpone immediate implementation of

the constitutional principles as announced in *Green* v. *County School Bd. of New Kent County*, 391 U.S. 430; *Alexander* v. *Holmes County Bd. of Educ.*, 396 U.S. 19 (Oct. 19, 1969); *Carter* v. *West Feliciana Parish School Bd.* —— U.S. —— (Jan. 14, 1970).[12]

The Fifth Circuit on January 21, 1970 entered a brief Order following reversal by this Court in *Carter*, adopting the January 14, 1970 opinion of this Court as its opinion on remand.

The Eighth Circuit in *Christian* v. *Board of Educ. of Strong School Dist. No. 83*, No. 20,038 (December 8, 1969), applied the *Alexander* rule in granting summary reversal and ordering the school district to file a plan by January 7, 1970 for complete desegregation at the beginning of the second semester of the current school year.

While the conflict between the decisions of this Court and the Sixth Circuit Court of Appeals provides a compelling case for action by this Court, the added and traditional ground of conflicting decisions among Courts of Appeals takes on dramatic importance here because of the nature of the constitutional rights involved and the proximity of school districts operating under exactly opposite determinations of the constitutional requirements.[13] A Negro child in Marshall County, Mississippi is granted his constitutional rights by order of this Court, while a Negro child across the county (and State) line a few miles away is denied these rights by the decision of a Court of Appeals. In view of the possible effect on all school districts, and in particular those within the Sixth Circuit, this Court cannot allow such different treatment to go uncorrected.

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[12] The entire order is reprinted *infra* at pp. 39a-42a.

[13] See Rule 19(1)(b) of the Rules of this Court.

In *Brown* v. *Board of Educ.*, 349 U.S. 294, 300 (1955), this Court enunciated a standard of action at "the earliest practicable date." Subsequent to *Alexander*, the Fifth Circuit in its *Singleton en banc* opinion delayed pupil integration until September, 1970 based upon a standard of "the earliest feasible date." Although this Court made clear in *Carter* that the rule must be *Alexander's*—"at once" and "now and hereafter"—the one year delay in the district court, the six month delay in the Court of Appeals, and the December 19, 1969 order establish a Sixth Circuit standard of "no precipitous action" which if unreversed renders *Alexander* and *Carter* nugatory within this Circuit.

II.

The Court of Appeals' January 19, 1970 Ruling That Memphis Now Operates a Unitary School System Directly Contradicts the Findings of the District Court and Conflicts With the Decisions of This Court From *Brown* to *Carter*.

On May 15, 1969, the district court found

> that the defendant [Memphis] Board has acted in good faith *as it interpreted its burden* to desegregate the schools in its system. *However, the existing and proposed plans do not have real prospects for dismantling the state-imposed dual* system at the "earliest practicable date."

(*Infra* at p. 18a) (emphasis supplied). Throughout the opinion, the district court characterizes Memphis as a "state-imposed dual system" which has not yet been disestablished, explicitly rejecting the claims of respondents that complete compliance with constitutional commands has been achieved:

> The defendant has compiled graphs and charts which indicate that 47,586 pupils within the system are attending schools with mixed racial enrollments. An examination of the enrollment figures shows that in some cases this includes a school wherein the ratio will be 1 white to 1822 Negro pupils, as in the case of Lincoln Junior High, and 1 Negro to 876 white pupils, as in the case of Treadwell Junior High. During the current year 71.5% of the Negroes attend all Negro schools.

(*Infra* at p. 11a). Petitioners' expert witness noted, for example, that nearly all Memphis high schools were either attended exclusively by students of one race or had but six or seven pupils of the minority race among total enrollments of 700 to 1000 pupils. The only exceptions were unzoned Memphis Technical High, Central High and Northside High, which was 4.8% white (Tr. 89-90).[14] In 1968-69, while 71.5% of Memphis' Negro pupils were in all-black schools, only 2.7% were in predominantly white schools, and only 2.2% of the white pupils were in predominantly Negro schools (Tr. 248).[15]

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[14] The district court opinion stated that "[a]s of the current school year, 1968-69, there are presently 35 all white schools, 50 all Negro schools, 47 predominantly white schools and 17 predominantly Negro schools." (*Infra* at p. 10a).

[15] The Superintendent decried this emphasis upon "statistics," and maintained that one student of a minority race among one thousand of the majority race made a facility a desegregated school (Tr. 340-42, 382). *Compare Green* v. *County School Bd. of New Kent County, supra; Jackson* v. *Marvell School Dist. No. 22*, 416 F.2d 380, 384 (8th Cir. 1969):

> "The admittance of 36 white students into a formerly all-Negro school still attended by 660 Negroes cannot be said to have the effect of casting off the school's racially identifiable cloak."

Other indicia of a continuing dual system were noted by petitioners' expert witness and the district court. From a comparison of the racial breakdown of pupils residing in adjacent zones, petitioners' witness concluded that the existing zone lines followed traditional boundaries between Negro and white neighborhoods (Tr. 40 *et seq.*), and the district court recognized the pattern:

> For example, Carpenter Elementary, grades 1-3, and Lester Elementary, Junior High and High Schools have grades 1 through 12 and are immediately adjacent to the Lester-Carpenter zone. Treadwell has 2884 whites and 8 Negroes. East has 1866 white students and 19 Negroes. The defendants point out that the Lester-Carpenter "island" zone boundaries are necessary because of industrial and commercial barriers, major thoroughfares and railroad tracks. The plaintiffs point out that these same tracks bisect other zones in other parts of the city.

(*Infra* at p. 15a). As of January 17, 1969, only 441½ of the 5,000 teachers in the system were in minority assignments, and many of these were not regular classroom teachers but those engaged in special programs (*infra* at p. 16a).

The district court concluded that in fact Memphis was not a unitary school system, and that further desegregation was required (although that court rejected some of petitioners' proposals to increase desegregation):

> In dismantling the former state-imposed dual system at the earliest practicable date the Board should undertake to remove racial discrimination in *all* schools, not just the schools in the inner city. . . .
>
> The zones are in need of revision for many purposes including further desegregation where feasible. . . .

> the Board should appoint a full time Director of Desegregation who shall be charged with investigating and recommending to the Board ways and means of assisting the Board in its affirmative duty to convert to a unitary system in which racial discrimination will be eliminated root and branch. . . . .
>
> The defendant Board in this case shall adopt a plan of faculty desegregation whereby supervisors, principals, teachers and other faculty personnel shall be employed, promoted and assigned in furtherance of a goal of removing the racial identity of each school, but no teachers shall be discharged from the system to correct a racial imbalance.
>
> An interim target for this goal shall be that at least 20% of the teachers in the system will be assigned to racially minority faculty positions in the year 1969-70. This percentage shall be systemwide and shall not necessarily require 20% in each school in 1969-70.[16]

(*Infra* at pp. 18a-22a).

Nevertheless, the Court of Appeals made no ruling on petitioners' claims that the district court should have voided Memphis' free transfer provision,[17] required immediate re-

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[16] No further faculty desegregation has yet been required by the district court.

[17] Petitioners' expert witness noted the general pattern that in zones with substantial Negro pupil resident population, the white student enrollment in schools located in those zones was considerably less than the white pupil resident population. See n. 8-*supra*. The district court declined to limit transfers to those which would increase desegregation because it found the influence of the free transfer provision upon the racial composition of the schools to be equivocal. Petitioners argued below that the free transfer provision facilitates avoidance of integration by students and parents opposed to it. *Compare Monroe* v. *Board of Comm'rs of Jackson*, 391 U.S. 450 (1968).

drawing of zone lines,[18] accelerated faculty desegregation and adopted the suggestions of petitioners' expert witness for interim steps to substantially increase desegregation in the Memphis school system.[19] In response to petitioners' argument[20] that these things were required, and were required *now* by the *Alexander* and *Carter* decisions, the Sixth Circuit in its January 12, 1970 order held these de-

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[18] In 1964 the Sixth Circuit found substantial evidence that the Klondike and Vollentine zones were "gerrymandered to preserve a maximum amount of segregation," required them redrawn and all zones scrutinized for the same purpose. 333 F.2d at 664. No change was made in the Klondike-Vollentine boundary (Tr. 374) nor, generally, in any of the zone lines (Tr. 150, 224-25). The district court found rezoning necessary (*infra* at p. 18a) but delayed requiring submission of new zone lines until January, 1970, setting no date for implementation of new zone lines.

[19] Petitioners' expert witness suggested that a detailed study carried out over some time would result in long-range plans to increase desegregation in Memphis (Tr. 104-07) but that there were a number of feasible interim alternatives which could have been effectuated in the fall of 1969 (Tr. 98-104) to move towards the goal of a completely unitary system: (1) redrawing of zone boundary lines at all levels (see also Tr. 49), (2) cancellation of the open transfer policy, (3) institution of a majority-to-minority transfer only, (4) suspension of all planned construction pending restudy to determine consonance with desegregation, (5) increased faculty desegregation—at least 30% in minority positions for 1969-70, (6) public relations programs to promote acceptance of more than token desegregation, (7) assistance of the University of Tennessee Title IV Center, and (8) pairings of schools to increase desegregation (Tr. 61-65).

[20] The Sixth Circuit refers in its order to the suggestion during oral argument that one measure of whether a unitary school system had been achieved was the degree to which each school has a pupil population racially reflective of the total system pupil population:

> We have expressed our own view that such a formula for racial composition of all of today's public schools is not required to meet the requirement of a unitary system.

(*Infra* at p. 7a). This hardly compels the conclusion, however,

cisions "not analogous" because "respondent Board of Education of Memphis is not now operating a 'dual school system' . . .". The genesis of this holding is difficult to discern. On December 19, 1969, the Sixth Circuit had remanded the case to the district court without impeaching the lower court's finding that there was still a dual school system in Memphis, advising only that the facts did not, in the Sixth Circuit's view, call for "precipitous action." Certainly the 1969-70 enrollment statistics presented to the Court of Appeals prior to its first ruling indicated no change from 1968-69. In fact, they show (*infra* at pp. 24a-31a) less desegregation than the previous year. 115,748, or 88.4% of Memphis' 130,930 students in grades 1-12 attend schools enrolling less than 10% students of the opposite race. Only 2,601 (3.5%) of 70,925 Negro students attend predominantly white schools; 49,821 (70.2%) attend all-Negro schools and 65,927 (93%) attend schools which are more than 90% Negro. The number of white students attending predominantly Negro schools has declined to 859 (1.4% of 60,005 white pupils). Integration in Memphis is still largely token: 55,037, or 88%, of the 68,091 students whom respondents claim attend integrated schools attend schools enrolling less than 10% students of the opposite race. 82.8% of the white students and 76.5% of the Negro students in what respondents term "integrated" schools attend classes with less than 10% students of the opposite race.

These figures hardly call for "no precipitous action," let alone "no action at all." Yet that is exactly the implication

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that no further desegregation at all is required in Memphis.

Petitioners also argued below, as they do here, that 93% of all Negro students attending Negro schools is a certain indicator that a unitary school system has not been achieved.

of the holding below that Memphis has achieved a unitary school system.[21]

Seven years ago this Court told the Negro citizens of Memphis that

> [t]he [constitutional] rights here asserted are, like all such rights, *present* rights; they are not merely hopes to some *future* enjoyment of some formalistic constitutional promise. The basic guarantees of our Constitution are warrants for the here and now and, unless there is an overwhelmingly compelling reason, they are to be promptly fulfilled. The second *Brown* decision is but a narrowly drawn, and carefully limited, qualification upon usual precepts of constitutional adjudication and is not to be unnecessarily expanded in application.

Watson v. *City of Memphis*, 373 U.S. 526, 533 (1963) (emphasis in original). *Alexander* and *Carter* decisively eliminated even that narrow and limited qualification. Yet if the determination of the Sixth Circuit—that a state-created dual school system is converted to a unitary system despite assignment of 93% of its Negro students to schools which are more than 90% Negro—is permitted to stand, the district court in this case and every other district court in this Circuit will be entirely without guidance. The entire history of school desegregation from *Brown* to *Carter* will have been for naught in the Sixth Circuit. The ten years of litigation by petitioners seeking to enforce the constitutional rights of Negro pupils in the City of Memphis will have

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[21] The Sixth Circuit has consistently been apart from other circuits in its application of *Green* and other cases which state a requirement of affirmative action on the part of school boards to eliminate all aspects of the dual system so that school shall no longer be racially identifiable. *See, e.g., Goss* v. *Board of Educ. of Knoxville*, 406 F.2d 1183 (6th Cir. 1969).

been an expensive exercise in futility, yet another example of the law's promise broken. The fundamental error below as well as the fulfilment of the promise of *Brown* and of *Alexander* require an order providing for effective procedures to insure action *now* to establish a unitary school system in Memphis.

CONCLUSION

Petitioners respectfully pray that a writ of certiorari to the United States Court of Appeals for the Sixth Circuit be issued, that the judgment below be summarily reversed with direction to require respondents to prepare, with the assistance of HEW or the HEW-funded University of Tennessee Title IV Center, a plan of complete pupil and faculty integration affecting all phases of the operations of the Memphis public school system to be implemented during the 1969-70 school year immediately following the order of this Court.

Respectfully submitted,

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Court of Appeals' December 19, 1969 Order

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 19,993

DEBORAH A. NORTHCROSS, *et al.*,

Plaintiffs-Appellants

v.

BOARD OF EDUCATION of the Memphis, Tennessee, City Schools,

Defendants-Appellees.

ORDER

Before WEICK and CELEBREZZE, Circuit Judges, and O'SULLIVAN, Senior Circuit Judge.

THIS CAUSE is before this Court upon the appeal of plaintiffs-appellants from an order and judgment of the United States District Court for the Western District of Tennessee, Western Division, and upon motions of plaintiffs-appellants denominated Motion for Summary Reversal and Motion to Require Adoption of Unitary System Now. These Motions requested us to hear the appeal and said motions without waiting the filing in this Court of a full transcript of the proceedings underlying the order from which the appeal is taken. However, this Court, on its own motion, advanced the hearing of the cause and it was submitted to a panel of this Court on December 17, 1969, upon briefs, oral argument and a partial transcript.

Court of Appeals' December 19, 1969 Order

This case has been before us previously on two occasions. In *Northcross v. Board of Ed. of City of Memphis*, 302 F(2) 818 (6th Cir. 1962); *cert. denied*, 370 U.S. 944, we held that the Tennessee Pupil Assignment Law was ineffective as a desegregation plan and restrained the Board from operating a bi-racial school system in Memphis, or in the alternative to adopt a plan looking toward the reorganization of the schools and to retain jurisdiction.

Upon the remand, the District Court ordered desegregation of the Memphis Schools in accordance with a plan of desegregation. On appeal, we held the transfer provision of the plan invalid, and required the Board to justify all existing zone lines. *Northcross v. Board of Ed. of City of Memphis*, 333 F(2) 661 (6th Cir. 1964). Subsequent thereto the District Court approved a modified plan for desegregation. Other proceedings were had, including consideration of a Motion for Further Relief, upon which the order before us on appeal was entered.

The District Judge, in an opinion covering fourteen pages of the record, gave consideration to the application for further relief by the plaintiffs-appellants, and in his opinion directed that further steps be taken for improvement of the progress of desegregation in the schools of the City of Memphis. His opinion, however, states:

> "In this cause the Court finds that the defendant Board has acted in good faith as it interpreted its burden to desegregate the schools in its system."

His opinion further requires that steps be taken to fully comply with the requirements of desegregation as to both pupils and faculty. His opinion calls for the appointment by the School Board of an administrative officer designated Director of Desegregation, to direct and cooperate in the

carrying out of a supplemental plan heretofore proposed by the Memphis Board of Education. His opinion further commands:

> "Prior to January 1, 1970, the Board will file in this cause maps showing the revised zone boundary lines and will file enrollment figures by race of the pupils actually attending the schools as of the time of the report and enrollment figures by race of the pupils who live in the proposed revised zones. The Court will then consider the adequacy of the revised zone boundaries and will reconsider the adequacy of the transfer plan for future years in accordance with the holding of the Supreme Court that district courts should retain jurisdiction to insure that a constitutionally acceptable plan is operated 'so that the goal of a desegregated, non-racially operated school system is rapidly and finally achieved.'"

It appears to this Court that the imminence of the presentation and consideration by the District Judge of the proposed plan to be submitted on or before January 1, 1970, suggests the impracticality of this Court attempting at this time to consider precipitously the various claims asserted by plaintiffs-appellants in their appeal and motions. This Court has been familiar with the problems of desegregation in the schools of Memphis since 1962, when it had before it the first judgment commanding desegregation, entered by the District Court on May 2, 1961. From review of this litigation and its underlying factual situation, it is satisfied that there is no need at this time for precipitous action. Therefore, no further order need be entered in this Court until the United States District Court has had submitted to it the ordered plan, and has had opportunity to consider and act upon it.

Court of Appeals' December 19, 1969 Order

NOW, THEREFORE, IT IS HEREBY ORDERED that this cause be, and it is, hereby remanded to the United States District Court for the Western District of Tennessee, Western Division, for further consideration of the plaintiffs-appellants' petition for further relief, and the plan, or any amendment thereto, to be presented to the District Court as required by its order of May 23, last.

Entered by order of the Court.

/s CARL W. REUSS,
Carl W. Reuss
Clerk

Court of Appeals' January 12, 1970 Order

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 19,993

DEBORAH A. NORTHCROSS, *et al.*,

Plaintiffs-Appellants,

—v.—

BOARD OF EDUCATION of the Memphis, Tennessee, City Schools,

Defendants-Appellees.

ORDER

Before WEICK and CELEBREZZE, Circuit Judges, and O'SULLIVAN, Senior Circuit Judge.

This Cause is now before this Court upon appellants' Motion for Injunction Pending Certiorari. Such pleading evidences plaintiffs' purpose to apply to the United States Supreme Court for a writ of certiorari to review an order of this Court entered in this cause on December 19, last. This litigation relates to the sufficiency of desegregation of the public schools of Memphis, Tennessee. By our order of December 19, we remanded this case to the United States District Court for the Western District of Tennessee. Such remand was for the purpose of providing District Judge Robert M. McRae, Jr., with opportunity to consider whether a plan, heretofore required by him to be filed on or before January 1, 1970, would conform to the commands of an order and opinion of said District Judge relating to further

desegregation of the Memphis schools. Such order and opinion are the subject of the appeal disposed of by our remand.

The motion now before us asks the immediate issuance of an injunction which will require:

> "1) The District Court to order the appellee City of Memphis Board of Education to prepare and file on or before January 5, 1970, in addition to the adjusted zone lines it is presently required to file, a plan for the operation of the City of Memphis 'public' schools as a unitary system during the current 1969-70 school year.
>
> "2) Appellants further move the Court that it issue its injunction requiring the District Court to hold hearings on any objections to the proposed plan no later than January 9, 1970; requiring it to issue its decision no later than January 14, 1970, with same to be filed with the Clerk of the Court of Appeals and providing for review by this Court upon motion of the parties made within ten days of entry of the order on such papers as are then available in the record of the District Court."

Appellants support their motion with citation of authorities which they assert require the action they ask us to take, viz: *Alexander v. Holmes Board of Education*, 396 U.S. 19; *Carter v. West Feliciana Parish School Board No. 944*, ___ U.S. ___, December 13, 1969, 38 U.S.L. Week 3220; *Singleton v. Jackson Municipal Separate School District*, ___ F(2) ___ (5th Cir. 1969, No. 26,285); *Nesbit v. The Statesville City Board of Education*, ___ F(2) ___ (4th Cir. 1969, No. 13,229).

Court of Appeals' January 12, 1970 Order

To the extent that the relevant factual context of the above cases is disclosed by the opinions available to us, we conclude that they are not analogous to the case before us. We are satisfied that the respondent Board of Education of Memphis is not now operating a "dual school system" and has, subject to complying with the present commands of the District Judge, converted its pre-Brown dual system into a unitary system "within which no person is to be effectively excluded because of race or color." In *Alexander v. Holmes Board of Education, supra*, the Supreme Court exposed the question then before it as involving:

> "the denial of fundamental rights to many thousands of school children who are presently attending Mississippi schools under segregated conditions contrary to the applicable decisions of this Court."

This quotation is not descriptive of the present situation of Memphis. For the school year 1969-70, there are approximately 134,000 children enrolled in the schools of Memphis, of which approximately 60,000 are white and 74,000 are Negroes. Upon the oral argument of this appeal, we asked counsel for plaintiffs to advise what he considered would be the "unitary system" that should be forthwith accomplished in Memphis. He replied that such a system would require that in every public school in Memphis there would have to be 55% Negroes and 45% whites. Departures of 5% to 10% from such rule would be tolerated. The United States Supreme Court has not announced that such a formula is the only way to accomplish a "unitary system". We have expressed our own view that such a formula for racial composition of all of today's public schools is not required to meet the requirement of a unitary system. *Deal*

v. *Cincinnati Board of Education* (Ohio schools) 369 F(2) 55 (6th Cir. 1966), *cert. denied*, 389 U.S. 847 (1967); *Mapp* v. *Board of Education*, (Tennessee schools), 373 F(2) 75, 78 (6th Cir. 1967); *Goss* v. *Knoxville Board of Education* (Tenn. schools) 406 F(2) 1183 (6th Cir. 1969); *Deal* v. *Cincinnati Board of Education*, (Ohio schools) —— F(2) —— (6th Cir. 1969).

The District Judge's opinion in this case evidences his awareness of today's requirements for school desegregation and his purpose to require strict obedience by the Memphis Board of Education to all of such requirements. We are advised that the plan which he required to be filed by January 1, 1970, is now before him. We are satisfied that he will consider it with appropriate dispatch, to the end that any deficiencies in the plan now in operation in Memphis will be corrected.

Our own familiarity with the progress of desegregation in the Memphis schools and our confidence in the District Judge to whom we have remanded this litigation suggests that it is not now needed that we issue the injunction asked.

The Motion for Injunction Pending Certiorari is denied.

Entered by order of the Court.

CARL W. REUSS
Clerk

District Court's May 15, 1969 Opinion

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TENNESSEE,

WESTERN DIVISION

No. 3931—Civil

DEBORAH A. NORTHCROSS, *et al.*,

Plaintiffs,

vs.

BOARD OF EDUCATION OF THE MEMPHIS CITY SCHOOLS, *et al.*,

Defendants.

OPINION

The plaintiffs in this cause filed a Motion for Further Relief based upon a ruling of the Supreme Court in *Green* v. *School Board of New Kent County, Virginia*, 391 U.S. 430; *Raney* v. *Board of Education, Gould School District*, 391 U.S. 443; and *Monroe* v. *Board of Commissioners of Jackson, Tennessee*, 391 U.S. 450, all dated May 27, 1968. Plaintiffs sought by their motion the cancellation of transfers and the requirement of additional desegregation of faculty members for the 1968-69 school year, an order of the court requiring a survey and report and a modification of the plan of desegregation heretofore entered in this cause on July 29, 1966. The application for immediate relief pertaining to the 1968-69 school year was heard and ruled upon by the Honorable Bailey Brown, Chief Judge of this

district. On November 8, 1968, a further hearing was had and this Court ordered the defendants to compile and furnish a report for the Court's further consideration concerning the plan of desegregation of the defendants. After the report was filed, the Court conducted a three-day hearing on the adequacy of the existing plan and proposed modification thereof. Proof was offered by the plaintiffs wherein it was asserted that the defendants have not and, under the existing plan, would not perform their affirmative duty of desegregating the former dual system of schools as required by the *Green*, *Raney* and *Monroe* cases.

The defendant School Board is elected by the voters in the City of Memphis to operate a school system which presently has an enrollment of 123,280 students: 65,170 of them are Negro and 58,110 are white. It operates a total of 149 elementary, junior high and high schools and it employs approximately 5200 teachers. The defendant school system is one of the largest single systems in the United States. By some standards it is considered twelfth in the nation. The instant suit was filed in March 1960 and there have been numerous proceedings in both the District Court and the Court of Appeals pertaining to this case. The last order in the cause before the present motion was filed was entered on July 29, 1966. This provided for a plan of desegregation which divided the defendant system into separate geographic zones at the elementary, junior high and high school levels. Pupils within the system have been assigned to the respective zones and have been allowed to transfer under a system whereby free transfers are permitted subject to space in the respective schools. As of the current school year, 1968-69, there are presently 35 all white schools, 50 all Negro schools, 47 predominantly white schools and 17 predominantly Negro schools. This is

based upon information furnished by the defendant school system as set forth in Trial Exhibit #6, wherein the current enrollment and pupil population based upon students residing in each attendance zone is set forth. For convenience of the Court, this was compiled on the basis of elementary schools, junior high schools and high schools. For promotion and record keeping purposes the system operates an elementary school of six grades, junior high of three grades and high school of three grades.

The defendant has compiled graphs and charts which indicate that 47,586 pupils within the system are attending schools with mixed racial enrollments. An examination of the enrollment figures shows that in some cases this includes a school wherein the ratio will be 1 white to 1,522 Negro pupils, as in the case of Lincoln Junior High, and 1 Negro to 876 white pupils, as in the case of Treadwell Junior High. During the current year 71.5% of the Negroes attend all Negro schools. In certain schools within the system there is a more equal mixing of the races, as in the case of Pope Elementary School, where the enrollment indicates there are 325 white pupils and 372 Negro pupils. It is interesting to note that pupils who reside in this zone number 230 white pupils and 256 Negro pupils. The proof, including maps which reflect the racial residential concentrations in the City of Memphis, shows that the Negro population is heavily concentrated in the older parts of the city and generally in a westwardly direction. Very few white citizens reside in these areas. In the extreme northern, eastern and southern portions of the city the racial concentration of the residents is overwhelmingly white. Within the geographic center of the city there is a predominantly white area ringed by mixed or Negro neighborhoods. Within this center area are located the more fa-

segregated schools, including Technical High School which has the highest high school ratio of mixed enrollment.

The system does not furnish transportation for its pupils except in unusual circumstances. The various buildings have been located on a neighborhood plan whereby an attempt has been made to provide for every student in the city a school as conveniently located as possible, taking into consideration such factors as the age of the students, natural boundaries in the form of major thoroughfares and other relevant factors.

The testimony reflects that the system is bussing some white students to overcome temporary problems. In the southeastern portion of the city some high school students have been bussed in a relatively new zone during the establishment of a new school in which a new grade has been added each year. This bussing will be complete this year. In the northwestern portion of the city some students in an all white elementary school zone are bussed to avoid a hazardous railroad crossing. This will be discontinued when an overpass is available for the use of those young pupils.

The system has no power to impose taxes. Its funds for operating expenses and capital improvements must be allocated by the City Council. Therefore, the Board is competing with all other phases of the city government for its necessary funds.

The system has been and is faced with the problem of providing school facilities to students who live in newly annexed areas which were formerly located in Shelby County outside the city limits. This usually requires new construction because the County system provides transportation for some of its students.

A plan which would require the defendants in this cause to provide transportation on a system wide basis in order

to effectuate substantial desegregation is not economically feasible. However, this Court is of the opinion that bussing which would result in further desegregation would be appropriate in preference to permanent additions to schools when population shifts have created or will likely create under capacity schools in one zone and over crowded schools in other zones.

The proof reflects that Getwell Elementary School is a school presently attended by 56 Negroes and no whites. It is in a recently annexed area in the southeastern portion of the city which is not densely populated. The geographic area of the zone includes 47 Negro pupils and 18 white pupils. The school is a legacy through annexation from the county. The area does not justify building a new school now but the pupils must be provided schools. The cost per pupil for 1967-68 was $822.63 in this school when it had 76 pupils. In its post hearing brief the defendant indicated that the school would be closed next year. This should be done.

The primary thrust of the plaintiffs' proof and argument is that transfers should be cancelled, thereby increasing desegregation. The defendants assert that resegregation will occur through ingration by whites from zones integrated above a "tilt" point of 30% Negro.

It is apparent from the proof that the cancellation of all transfers will not effect the racial make-up of many schools because of the segregated housing patterns in different sections of the city which are miles apart. Undoubtedly, this is due in a large measure to economic factors over which the defendant Board has no control.

By way of illustration, certain phases of the high school enrollment and zone population figures by races are summarized herein. There are exclusive of the technical high

District Court's Bench Opinion

1965 to the school has 844 Negroes and no white pupils. In the case of Longview Elementary School, in 1965 there were 322 whites and 261 Negroes, whereas in 1968 there are 1280 Negroes and 16 whites. These changes primarily were caused by changes in neighborhood racial patterns. In addition to racial changes, some of the zones have diminishing numbers of school-age students and hence are operating at under capacity. Fairview Junior High had 1501 students in 1965-66 and now has only 476. The school is still approximately 75% white. An examination of the racial residential density map and zone figures shows that the inner city is the area where the most significant desegregation does and will occur in the near future unless a massive busing system is installed. Within this general area some glaring islands appear. For example, Carpenter Elementary, grades 1-6, and Lester Elementary, Junior High and High Schools have a total of 2396 students, all Negro. Treadwell and East High Schools have grades 1 through 12 and are immediately adjacent to the Lester Carpenter zone. Treadwell has 2884 whites and 8 Negroes. East has 1501 white students and 10 Negroes. The statistics point out that the Lester Carpenter "island" zone boundaries are gerrymandered because of industrial and commercial barriers, major thoroughfares and railroad tracks. The plaintiffs point out that these same tracks bisect other zones in other parts of the city.

The defendant's initial response to the pending Motion for Further Relief was a complete defense of its present system. During this hearing the Board offered a Supplemental Plan which proposed that the defendant Board appoint a Director of Intercultural Education who shall be charged with the responsibility of formulating plans and programs for intercultural and cross-cultural [illegible]

basis on a biracial basis. This would include temporary principal and teacher exchanges and pupil exchanges in various areas, including vocational training, arts and crafts, academic courses and music and debate.

Faculty desegregation in the defendants' system was first undertaken in the school year 1966-67, when faculty members were assigned as members of a minority race in the schools which had formerly had total white faculties and total Negro faculties under the dejure system of segregated schools. In 1967-68 the number of minority assignments was 226. After the pending motion was filed in July 1968, and before the opening of school for the current year, the defendant system, upon the suggestion of the Honorable Bailey Brown, made additional minority reassignments so that every school in the system but one had a member of the minority race on its faculty. Since the beginning of the school year additional minority assignments have been made so that the total, as of January 15, 1969, was 441[1]. Plaintiffs have introduced proof that 57 of the 183 white teachers in the minority race situations are in various special assignments such as Title I teachers and ROTC instructors. Whereas, 19 of the 247 Negro teachers in minority situations are in similar special programs.

The method of faculty desegregation prior to the filing of the pending motion was highly selective resulting in a small percentage of the total faculty assignments being minority race assignments. The planning programs and the meetings which bring faculty members from different schools together have been upon a desegregated basis, and there have been other desegregation efforts such as temporary assignment. Six Negro principals in predominantly white schools and recently a printed leaflet setting forth steps and suggestions in the area of desegregated faculties and schools

However, special programs and seminars to encourage and prepare all teachers for substantial desegregation of faculties have not been conducted.

In *Green v. County School Board, supra*, the Supreme Court said:

> "The obligation of the district courts, as it always has been, is to assess the effectiveness of a proposed plan in achieving desegregation. There is no universal answer to complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in light of the circumstances present and the options available in each instance. It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation. It is incumbent upon the district court to weigh that claim in light of the facts at hand and in light of any alternatives which may be shown as feasible and more promising in their effectiveness. Where the court finds the board to be acting in good faith and the proposed plan to have real prospects for dismantling the state-imposed dual system 'at the earliest practicable date,' then the plan may be said to provide effective relief. Of course, the availability to the board of other more promising courses of action may indicate a lack of good faith; and at the least it places a heavy burden upon the board to explain its preference for an apparently less effective method. Moreover, whatever plan is adopted will require evaluation in practice, and the court should retain jurisdiction until it is clear that the state-imposed segregation has been completely removed." (Emphasis added)

391 U.S. at p. 439

should be reconsidered and revised annually in the light of all relevant factors, including the Board's affirmative duty to eliminate racial discrimination.

The Board should appoint a full time Director of Desegregation who shall be charged with investigating and recommending to the Board ways and means of assuring the Board of its affirmative duty to convert to a unitary system in which racial discrimination will be eliminated root and branch. *Green v. County School Board, supra*, at pp. 437-438. One of the specific assignments shall be a revision of zone boundary lines. Factors to be considered in addition to more effective desegregation shall be the capacities of the schools, the location of students, the location of existing school facilities and the safety of the students, including natural boundaries, railroad crossings and thoroughfares.

For the year 1969-70 the present transfer system will be followed except that the Board will incorporate in its plan and appropriately announce a specific provision whereby all transfers requested by students from a zone in which they are in a racial majority to a zone in which they will be in a racial minority will be allowed regardless of reason and subject only to lack of space to a degree whereby the transfer would interfere with the elimination process.

Prior to January 1, 1970, the Board will file at this cause a plan showing the revised zone boundary lines and will file enrollment figures by race of the pupils actually attending the schools as of the time of the report and enrollment figures by race of the pupils who live in the proposed revised zones. The Court will then consider the adequacy of the revised zone boundaries and will reconsider the adequacy of the Board's plan for future years in accordance with the holding of the Supreme Court, the district courts

should retain jurisdiction to insure that a constitutionally acceptable plan is operated "so that the goal of a desegregated non-racially operated school system is rapidly and finally achieved." *Rogers v. Board of Education, supra*, at p. 449.

The Director of Desegregation shall also promulgate and plan biracial activities as proposed in the Supplemental Plan of the Board, with particular emphasis on those schools which are not desegregated.

New Schools, additions to existing schools and the use of portable class rooms shall be programmed, planned and constructed in furtherance of the Board's affirmative duty to convert to a unitary system free from racial discrimination and in accordance with other factors such as financial limitations, location of students, age level of the students, safety of the students and other relevant non-racial factors. In the good faith performance of this affirmative duty, the Board should be particularly mindful of the 1967 report of the United States Commission on Civil Rights (Racial Isolation in the Public Schools), wherein it is reported on page 61:

> "Site Selection. — As noted in the discussion of Northern schools, the location of new school has a marked effect on patterns of isolation. Whether a school system uses geographical zoning, free choice, or a variation on these methods of assignment, a key determinant of the resident racial composition is the location of the school.
>
> "At the time of the Brown decision, Southern educators were aware that the location of schools was an important factor in maintaining segregated school attendance patterns. A story in a Memphis, Tenn., newspaper on May 18, 1954, is illustrative:

> "'Ruling Fails to Shock City; Officials See Little Difficulty
>
> "'School authorities in Memphis yesterday evidenced no surprise at the [Brown] decision . . . Mr. Millard Bowers, Sr., President of the Memphis Board of Education, said, "We have been expecting this to happen a long while . . . We believe our Negroes will continue using their own school facilities since most of them are located in the center of Negro population areas. . . . [Negro schools are] fully equal to, and in some instances [better than white schools]. We are very optimistic about this [ruling]."'

In this regard it should be noted that the defendant Board recently voluntarily closed Patterson School, which had been a Negro school, thereby encouraging those students to attend White Station School which is a predominantly white school located in the immediate vicinity of the former Patterson School.

In *U. S. A. v. Greenwood Municipal Separate School District*, 406F2 1086 (C. A. 5, Feb. 4, 1969) the court said:

> "The school board must put its shoulder to the wheel and assume the burden in integrating the faculty and staff of each school. The transformation to a unitary system will not come to pass until the board has balanced the faculty of each school so that no faculty is identifiable as being tailored for a heavy concentration of Negro or white students. . . . To assure compliance it is evident that the district judge will have to announce interim targets and conduct subsequent hearings to determine what progress is being made."

The defendant Board in this case shall adopt a plan of faculty desegregation whereby supervisors, principals, teachers and other faculty personnel shall be employed, promoted and assigned in furtherance of a goal of removing the racial identity of each school, but no teachers shall be discharged from the system to correct a racial imbalance.

An interim target for this goal shall be that at least 30% of the teachers of the system will be assigned to racially minority faculty positions in the year 1969-70. This percentage shall be systemwide and shall not necessarily require 20% in each school in 1969-70.

Teachers shall be assigned on the basis of certification and qualification for the academic subjects or grade level to be taught. Assignments to racially minority faculties shall not be left to the choice of the teacher. *Monroe v. Board of Commissioners*, 380 F2d 955 (C.A. 6, 1968).

The Board shall have properly trained personnel conduct appropriate seminars and programs for *all* teachers in the system to prepare *all* faculty personnel for desegregated faculties. In this regard the properly trained personnel may be from within or without the system, provided they are properly trained for that purpose and are dedicated to a program of desegregated faculties.

The above shall constitute the findings of fact and conclusions of law of this Court as contemplated by Rule 52 of the Federal Rules of Civil Procedure. Counsel for the defendants shall promptly file a revised plan which shall incorporate therein the provisions of the existing plan and the supplemental plan which are not inconsistent with this opinion and shall also incorporate therein such additional provisions that are required by this opinion. A separate form of judgment incorporating the contents of this opinion

and the revised plan shall also be filed by counsel for the defendants.

This 15th day of May, 1969.

/s/ Robert M. McRae, Jr.
Robert M. McRae, Jr.
United States District Judge

A True Copy:

Attest:

W. Lloyd Johnson, *Clerk*
By /s/ J. B. Crockett, *D.C.*

1969-70 Enrollment Statistics

MEMPHIS CITY SCHOOLS

Enrollment Data

School Year 1969-70

Recap of figures compiled from second attendance report dated October 23, 1969.

INTEGRATED TOTALS:

	White	*Negro*	*Total*	
Kindergarten	156	194	350	
Special Ed.	1098	448	1546	
Elementary	25368	11647	37015	
Junior Hi	11946	5984	17930	
Senior Hi	9673	3473	13146	
	48241	21746	69987	52.1%

NON-INTEGRATED TOTALS:

Kindergarten	50	529	579	
Special Ed.	75	794	869	
Elementary	5842	27144	32986	
Junior Hi	3632	12853	16485	
Senior Hi	3544	9824	13368	
	13143	51144	64287	47.9%

COMBINED TOTALS:

Kindergarten	206	723	929
Special Ed.	1173	1242	2415
Elementary	31210	38791	70001
Junior Hi	15578	18837	34415
Senior Hi	13217	13297	26514
	61384	72890	134274
	45.7%	54.3%	

Department of Pupil Services
jh (12-12-69)

ENROLLMENT DATA—MEMPHIS CITY SCHOOLS—ATTENDANCE REPORT ENDING 10-23-69

School	14 Kindergarten White	14 Kindergarten Negro	45 Special Ed. White	45 Special Ed. Negro	59 Elementary White	59 Elementary Negro	25 Junior Hi White	25 Junior Hi Negro	15 Senior Hi White	15 Senior Hi Negro	Total
Airways Jr.	—	—	37	—	—	—	342	109	—	—	488
Avon	—	—	13	6	298	41	—	—	—	—	358
Bellevue Jr.	—	—	19	5	—	—	384	276	—	—	684
Bethel Grove	—	—	9	1	142	296	—	—	—	—	448
Bruce	14	11	—	—	338	129	—	—	—	—	492
Campus	—	—	22	—	524	12	—	—	—	—	558
Central	—	—	—	—	—	—	—	—	951	219	1170
Charjean	—	—	—	—	629	8	—	—	—	—	637
Cherokee	19	6	16	2	622	212	—	—	—	—	877
Colonial El.	—	—	—	—	728	6	—	—	—	—	734
Cromwell	25	—	—	—	477	2	—	—	—	—	504
Cypress Jr.	—	—	—	—	—	—	1	1573	—	—	1574
Delano	—	—	—	—	396	2	—	—	—	—	398
Denver	—	—	35	1	673	2	—	—	—	—	711
Dunbar	—	25	—	—	1	779	—	—	—	—	805
East El.	—	—	—	—	589	14	—	—	—	—	603
East Hi	—	—	—	—	—	—	621	6	607	9	1243
Fairview Jr.	—	—	—	—	—	—	268	149	—	—	417
Frayser Hi	—	—	—	—	—	—	942	—	999	1	1942
Ga. Hills El.	—	—	—	—	789	3	—	—	—	—	792
Ga. Hills Jr.	—	—	31	1	—	—	607	23	—	—	662
Goodlett	—	—	—	—	920	1	—	—	—	—	921
Gordon	—	—	—	—	16	716	—	—	—	—	732

Integrated in Spec. Ed. only

School	Kindergarten White	Kindergarten Negro	Special Ed. White	Special Ed. Negro	Elementary White	Elementary Negro	Junior Hi White	Junior Hi Negro	Senior Hi White	Senior Hi Negro	Total
Gragg	—	—	45	1	309	5	348	1	—	—	709
Grahamwood	—	—	63	2	525	4	—	—	—	—	594
Grant	—	25	—	—	1	662	—	—	—	—	688
Guthrie	—	—	8	20	125	664	—	—	—	—	817
Hawkins Mill	21	4	40	1	369	85	—	—	—	—	520
Hill, A. B.	—	25	24	3	1243	—	—	—	—	—	1295
Humes Jr.	—	—	6	24	—	—	61	1386	—	—	1477
Idlewild	—	—	11	6	447	51	—	—	—	—	515
Jackson	—	—	—	—	436	1	—	—	—	—	437
Knight Road	25	—	51	—	702	1	—	—	—	—	779
LaRose	—	25	1	122	—	1453	—	—	—	—	1601
Lawler	—	—	—	—	149	2	—	—	—	—	151
Lenox	—	—	38	6	89	2	—	—	—	—	135
Levi (1-8)	—	—	11	1	328	162	83	39	—	—	624
Longview (1-5)	—	—	—	—	6	1361	—	—	—	—	1367
Longview (6-8)	—	—	—	31	—	—	3	898	—	—	932
Macon	—	—	—	—	466	5	—	—	—	—	471
Mallory Hts.	—	—	3	9	60	412	—	—	—	—	484
Maury	—	—	—	—	175	40	—	—	—	—	215
Merrill	—	25	—	—	32	379	—	—	—	—	436
Messick (1-6)	—	—	—	—	342	103	—	—	—	—	445
Messick (7-12)	—	—	—	—	—	—	403	67	1117	29	1616
Northside	—	—	5	23	—	—	—	—	26	1360	1414
Oakhaven El.	—	—	11	—	1013	2	—	—	—	—	1026
Oakhaven Hi	—	—	12	1	—	—	600	1	495	—	1109
Oakville	—	—	—	—	218	38	—	—	—	—	256
Peabody	—	—	30	5	384	53	—	—	—	—	472

School	Kindergarten White	Kindergarten Negro	Special Ed. White	Special Ed. Negro	Elementary White	Elementary Negro	Junior Hi White	Junior Hi Negro	Senior Hi White	Senior Hi Negro	Total
Pine Hill	—	—	—	30	1	321	—	—	—	—	352
Pope	—	—	6	9	211	472	—	—	—	—	698
Prospect	—	—	—	—	3	279	—	—	—	—	282
Richland El.	—	—	—	—	826	2	—	—	—	—	828
Richland Jr.	—	—	—	—	—	—	646	17	—	—	663
Riverview El.	—	—	—	—	3	1218	—	—	—	—	1221
Riverview Jr.	—	—	—	17	—	—	1	875	—	—	893
Rozelle	2	23	6	17	47	670	—	—	—	—	765
Sea Isle	25	—	56	—	1005	4	—	—	—	—	1090
Shady Grove	—	—	22	—	620	20	—	—	—	—	662
Sharpe	—	—	—	—	452	7	—	—	—	—	459
Sheffield (7-12)	—	—	—	—	—	—	623	27	391	14	1055
Sherwood El.	24	1	75	—	880	43	—	—	—	—	1023
Sherwood Jr.	—	—	52	5	—	—	1197	49	—	—	1303
Shrine	—	—	19	27	29	25	18	6	8	1	133
Snowden (1-9)	—	—	—	—	557	22	495	93	—	—	1167
South Park	—	—	93	—	415	1	—	—	—	—	509
South Side (9-12)	—	—	—	20	—	—	2	274	6	1480	1782
Springdale	1	24	—	—	12	462	—	—	—	—	499
Tech	—	—	—	—	—	—	—	—	592	243	835
Treadwell El.	—	—	—	—	1134	1	—	—	—	—	1135
Treadwell (7-12)	—	—	28	—	—	—	819	3	864	8	1722
Trezevant (7-12)	—	—	—	—	—	—	869	6	824	16	1715
Vollintine	—	—	14	23	142	262	—	—	—	—	441
Wells Station	—	—	21	—	718	1	—	—	—	—	740
Westside El.	—	—	25	—	820	10	—	—	—	—	855
Westwood El.	—	—	17	1	1450	23	—	—	—	—	1491

School	Kindergarten White	Kindergarten Negro	Special Ed. White	Special Ed. Negro	Elementary White	Elementary Negro	Junior Hi White	Junior Hi Negro	Senior Hi White	Senior Hi Negro	Total
Westwood (7-12)	—	—	—	—	—	—	723	40	631	43	1437
White Sta. El.	—	—	57	22	313	93	—	—	—	—	485
White Sta. (7-12)	—	—	1	6	—	—	761	52	1386	50	2256
Whitney	—	—	22	—	236	1	—	—	—	—	259
Willow Oaks	—	—	43	—	933	2	—	—	—	—	978
Wooddale	—	—	—	—	—	—	1129	14	776	—	1919
	156	194	1098	448	25368	11647	11946	5984	9673	3473	69987

INTEGRATED TOTALS:

Kindergarten	156	194	
Special Ed.	1098	448	
Elementary	25368	11647	
Junior Hi	11946	5984	
Senior Hi	9673	3473	
	48241	21746	= 69987

Department of Pupil Services
jh (12-12-69)

ENROLLMENT DATA—MEMPHIS CITY SCHOOLS—ATTENDANCE REPORT ENDING 10-23-69

School	23 Kindergarten White	23 Kindergarten Negro	26 Special Ed. White	26 Special Ed. Negro	40 Elementary White	40 Elementary Negro	19 Junior Hi White	19 Junior Hi Negro	12 Senior Hi White	12 Senior Hi Negro	Total
	2	21	2	24	8	32	3	16	3	9	—
Alcy	—	—	—	—	—	766	—	—	—	—	766
Berclair	25	—	—	—	553	—	—	—	—	—	578
Brookmeade	—	—	—	—	909	—	—	—	—	—	909
Caldwell	—	—	—	—	—	1662	—	—	—	—	1662
Carnes	—	25	—	26	—	706	—	172	—	—	929
Carpenter	—	—	—	—	—	331	—	—	—	—	331
Carver	—	—	—	—	—	—	—	989	—	1190	2179
Chicago Park	—	25	—	—	—	588	—	—	—	—	613
Colonial Jr.	—	—	—	—	—	—	1594	—	—	—	1594
Corning	25	—	—	—	386	—	—	—	—	—	411
Corry Rd.	—	—	—	—	—	—	—	1055	—	—	1055
Cummings	—	26	—	24	—	1126	—	—	—	—	1176
Douglass El	—	25	—	19	—	954	—	—	—	—	998
Douglass (7-12)	—	—	—	37	—	—	—	675	—	1081	1793
Dunn	—	24	—	—	—	542	—	—	—	—	566
Evans	—	—	—	—	977	—	—	—	—	—	977
Florida	—	—	—	29	—	1175	—	—	—	—	1204
Ford Rd. (1-7)	—	26	—	28	—	839	—	167	—	—	1060
Fox Meadows	—	—	—	—	843	—	—	—	—	—	843
Frayser El.	—	—	—	—	468	—	—	—	—	—	468
Geeter El.	—	—	—	7	—	408	—	—	—	—	415
Geeter (7-12)	—	—	—	14	—	—	—	271	—	420	705
Georgia Ave.	—	—	—	92	—	1754	—	—	—	—	1846

School	Kindergarten White	Kindergarten Negro	Special Ed. White	Special Ed. Negro	Elementary White	Elementary Negro	Junior Hi White	Junior Hi Negro	Senior Hi White	Senior Hi Negro	Total
Grandview Hts.	—	—	30	—	861	—	—	—	—	—	891
Hamilton El.	—	25	—	—	—	1294	—	—	—	—	1319
Hamilton (7-12)	—	—	—	—	—	—	—	1439	—	1789	3228
Hanley	—	26	—	58	—	1451	—	—	—	—	1535
Hollywood	—	—	—	—	—	874	—	—	—	—	874
Hyde Park	—	25	—	40	—	1450	—	—	—	—	1515
Kansas	—	25	—	—	—	949	—	—	—	—	974
Kingsbury El.	—	—	45	—	845	—	—	—	—	—	890
Kingsbury (7-12)	—	—	—	—	—	—	1477	—	1429	—	2906
Klondike	—	25	—	129	—	673	—	—	—	—	827
Lakeview	—	27	—	7	—	443	—	136	—	—	613
Lauderdale	—	25	—	6	—	718	—	—	—	—	749
Leath	—	25	—	84	—	711	—	—	—	—	820
Lester El.	—	25	—	13	—	896	—	—	—	—	934
Lester (7-12)	—	—	—	—	—	—	—	578	—	484	1062
Lincoln El.	—	25	—	19	—	765	—	—	—	—	809
Lincoln Jr.	—	—	—	28	—	—	—	1779	—	—	1807
Locke	—	25	—	—	—	1051	—	—	—	—	1076
Magnolia	—	25	—	—	—	1035	—	—	—	—	1060
Manassas	—	—	—	—	—	—	—	1208	—	1025	2233
Melrose (7-12)	—	—	—	17	—	—	—	1258	—	1131	2406
Mitchell (8-12)	—	—	—	26	—	—	—	723	—	836	1585
Norris	—	—	—	—	—	620	—	—	—	—	620
Orleans	—	25	—	—	—	831	—	—	—	—	856
Overton	—	—	—	—	—	—	—	—	1735	—	1735
Porter	—	—	—	29	—	—	—	2270	—	—	2299
Shannon	—	—	—	—	—	957	—	—	—	—	957

School	Kindergarten White	Kindergarten Negro	Special Ed. White	Special Ed. Negro	Elementary White	Elementary Negro	Junior Hi White	Junior Hi Negro	Senior Hi White	Senior Hi Negro	Total
Stafford	—	25	—	—	—	551	—	—	—	—	576
Walker (1-7)	—	—	—	11	—	681	—	113	—	—	805
Washington	—	—	—	21	—	—	—	—	—	1868	1889
Weaver (1-7)	—	—	—	—	—	152	—	20	—	—	172
Westside (7-12)	—	—	—	—	—	—	561	—	380	—	941
Wisconsin	—	25	—	30	—	191	—	—	—	—	246
	50	529	75	794	5842	27144	3632	12853	3544	9824	64287

NON-INTEGRATED TOTALS:

Kindergarten	50	529
Special Ed.	75	794
Elementary	5842	27144
Junior Hi	3632	12853
Senior Hi	3544	9824
	13143	51144 = 64287

Department of Pupil Services
jh (12-12-69)

Motion to Require Adoption of Unitary System Now

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 3931

DEBORAH A. NORTHCROSS, *et al.*,

Appellants,

VS.

BOARD OF EDUCATION OF THE MEMPHIS CITY SCHOOLS,

Appellees.

Come now the appellants and respectfully move the Court for an order directing the immediate and total desegregation of the City of Memphis School system. In support of said motion, appellants would respectfully show unto the Court:

1. The United States Supreme Court on October 29, 1969, in the case of *Alexander* v. *Holmes County Board of Education,* No. 632, held that school districts which previously operated dual school systems based on race or color must begin *immediately* to operate as unitary school systems within which no person is to effectively be excluded from any school because of race or color.

2. The Supreme Court charged the Court of Appeals before whom a case is pending with the responsibility for requiring the school system to be operated as a unitary system under its own order and that during the period

under which a school system is so operated, the District Court may hear and consider objections thereto or proposed amendments thereof while the order of the Court of Appeals remains in effect, but no changes may be made in such an order requiring the operation of a unitary system until such change has been passed upon by the Court of Appeals.

3. Appellants filed their Motion for Summary Reversal of the decision of the District Court on June 13, 1969. It remains pending before this Court but has not been heard.

4. As of the school year, 1968-69, there were 35 all-white schools, 50 all-Negro schools, 47 predominantly white schools, and 17 predominantly Negro schools in the City of Memphis. In fact, 92 schools in the City of Memphis are either all Negro or all white or have less than 10% of their pupils from students of the opposite race of the majority of the students in the school. The language of the District Court was "during the current year, 71.5% of the Negroes attend all-Negro schools." The situation for the 1969-70 term remains virtually the same.

5. Under the order of the District Court, schools remain identifiable in terms of their faculty as being tailored for white or black students in that the majority of schools still do not reflect the racial composition of the faculty and staff in the system.

6. The Court's order does not enjoin construction of new schools pending the institution of new zone lines.

7. The District Court found "However, the existing and proposed plans do not have real prospects for dismantling the state imposed dula system at the 'earliest practicable

date.'" Despite this finding, the Court in its May 15, 1969, decision did not require the institution of new zone lines for the beginning of the 1969-70 school term. It delayed the filing of new zone lines until January, 1970.

WHEREFORE, Appellants move this Court to enter its order without hearing in conformance with the decision of the Supreme Court of the United States on October 29, 1969 requiring:

1. Adoption of a new plan of desegregation within ten days including the institution of new zone lines, based upon geographic zoning, pairing of schools, non-contiguous zones, and cross transportation of pupils to achieve desegregation of all-Negro or all-white schools wherever necessary, thereby eliminating all-white and all-black schools, leaving only unitary "schools" operated by the appellee Board of Education.

2. The institution of said plan of desegregation eliminating all-black and all-white schools and leaving only unitary schools forthwith in accordance with the opinion of the United States Supreme Court in *Alexander* v. *Holmes County Board of Education*, supra.

3. Reassignment forthwith of faculty and staff so that each school within a margin of 10% reflects the ratio of Negro and white teachers in the system.

4. Enjoin further construction pending adoption of the new pattern of school organization.

5. Eliminate the "free transfer" provision approved by the District Court.

Respectfully submitted,

/s/ Louis R. Lucas
Louis R. Lucas
525 Commerce Title Building
Memphis, Tennessee 38103

Jack Greenberg
Norman Chachkin
10 Columbus Circle
New York, New York 10019

Certificate of Service

The undersigned hereby certifies that a copy of the foregoing Motion for Adoption of Unitary System has been served upon counsel for the appellee, Jack Petree at his office, 900 Memphis Bank Building, Memphis, Tennessee, by depositing a copy of same in the United States mail, postage prepaid, this 3rd day of November, 1969.

/s/ Louis R. Lucas
Louis R. Lucas

Motion to Convene Emergency Panel

IN THE

UNITED STATES COURT OF APPEALS

FOR THE WESTERN DISTRICT OF TENNESSEE

No. 3931

DEBORAH A. NORTHCROSS, *et al.*,

Appellants,

VS.

BOARD OF EDUCATION OF THE MEMPHIS CITY SCHOOLS,

Appellees.

Come now the appellants through their undersigned counsel and respectfully move the Court to convene an emergency panel of the Sixth Circuit Court of Appeals for the purpose of consideration and ruling on the motion filed by appellants pursuant to the decision of the United States Supreme Court in *Alexander* v. *Holmes County Board of Education*, No. 632, October term, 1969 (Oct. 29, 1969), which opinion requires the court of appeals before whom a school desegregation case is pending to act forthwith and require school districts which previously operated dual school systems based on race or color to begin *immediately* to operate as unitary school systems. In the language of the opinion, "every school district . . . to terminate dual systems *at once*, and to operate now and hereafter only unitary schools." (emphasis supplied).

In support of said motion appellants would respectfully show unto the court that there has been on file with this court since June, 1969, a Motion for Summary Reversal of the order of the district court which order failed to pro-

vide for the operation of a unitary school system in the City of Memphis public schools by the start of the 1969-70 school term. Appellants further show that this court declined to hear the motion for summary reversal pending receipt of the transcript of the trial testimony; It was further submitted to the court by written motion a copy of a letter from the court reporter for the United States District Court written at the request of the district judge advising that becuase of the press of other business, such a transcript could not be made available until after the start of the school term. This second motion asked this court to act without benefit of transcript; The court declined to act, thereby denying appellants relief for the start of the 1969-70 school term. Despite the requirement of the Sixth Circuit rules of a response to motions within seven days, appellees have filed no response to any of the pending motions.

Appellants are advised that this court in consideration of the latest pending motion to "Adopt a Unitary System Now" still awaits the receipt of a transcript prior to a hearing or decision on the summary motions pending before it. Appellants have been advised by the Clerk of the Court of Appeals that he has been advised to set the matter for hearing on the court's December docket and that the Court still requires the submission of the transcript. It is respectfully submitted that the delay envisioned by a setting sometime during the December term of the court does not meet the requirements of *Alexander* v. *Holmes County Board of Education, supra,* and may result in further delays constituting a denial of appellants' rights under the Constitution and laws of the United States.

Wherefore, appellants respectfully submit that the court should convene an emergency panel of the court prior to

the December term for the purpose of decision with or without a hearing based upon the records already available to the court which include the decision of the district court, a lengthy motion for summary reversal and a printed appendix to said motion containing reproductions of exhibits filed with the district court as well as a reproduction of the district court's opinion. That said panel order the immediate establishment of a unitary school system in the City of Memphis without awaiting receipt of transcript, briefs, or arguments of counsel.

Respectfully submitted,

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Certificate of Service

This is to certify that a copy of the foregoing Motion has been served on counsel for the appellee, Mr. Jack Petree, at his office, 900 Memphis Bank Building, Memphis, Tennessee, this 13th day of November, 1969.

/s/ Louis R. Lucas
Louis R. Lucas

En Banc Fourth Circuit Decision

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 13,904

THEODORE WHITMORE STANLEY, *et al.*,

Appellants,

VERSUS

DARLINGTON COUNTY SCHOOL DISTRICT, *et al.*,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA, AT FLORENCE. J. ROBERT MARTIN, JR., DISTRICT JUDGE.

No. 13,905

ELAINE WHITTENBERG, *et al.*,

Appellants,

VERSUS

SCHOOL DISTRICT OF GREENVILLE COUNTY, ETC., *et al.*,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA, AT GREENVILLE. J. ROBERT MARTIN, JR., DISTRICT JUDGE.

En Banc 4th Circuit Decision

ORDER

We consolidated these appeals for hearing and disposition in light of *Alexander* v. *Holmes County Bd. of Educ.*, 396 U.S. 19 (Oct. 29, 1969), and *Nesbit* v. *Statesville City Bd. of Educ.*, —— F.2d —— (4th Cir., Dec. 2, 1969).

In *Alexander* the Supreme Court held that "the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools." In *Carter* v. *West Feliciana Parish School Bd.*, —— U.S. —— (Jan. 14, 1970), the Supreme Court re-emphasized the immediacy of its holding in *Alexander*. It vacated an order of the United States Court of Appeals for the Fifth Circuit, sitting en banc, permitting pupil integration to be deferred until the opening of the new school year in September 1970. The Court of Appeals for the Fifth Circuit was held to have misconstrued the Supreme Court's decision in *Alexander*, and complete student integration was held to be required in those cases by February 1, 1970.

These decisions leave us with no discretion to consider delays in pupil integration until September 1970. Whatever the state of progress in a particular school district and whatever the disruption which will be occasioned by the immediate reassignment of teachers and pupils in midyear, there remains no judicial discretion to postpone immediate implementation of the constitutional principles as announced in *Green* v. *County School Board of New Kent County*, 391 U.S. 430; *Alexander* v. *Holmes County Bd. of Educ.*, 396 U.S. 19 (Oct. 29, 1969); *Carter* v. *West Feliciana Parish School Bd.*, —— U.S. —— (Jan. 14, 1970).

Accordingly, it is ADJUDGED, ORDERED AND DECREED:

1. Each of the school districts shall submit to the District Court a plan for unitary schools on or before January 23, 1970;

A. The plan for *Darlington* may be based upon proposal B submitted by the Department of Health, Education and Welfare, or upon any other plan that will create a unitary school system;

B. The plan for *Greenville* may be based upon the revised plan submitted by the school board or upon any other plan that will create a unitary school system;

C. All plans must include provisions for the integration of the faculty so that the ratio of Negro and white faculty members of each school shall be approximately the same as the ratio throughout the system. In determining the ratio, exceptions may be made for specialized faculty positions;

2. The plaintiffs and the Department of Health, Education, and Welfare may file responses to the plans on or before January 28, 1970;

3. The District Judge will conduct a hearing in each of these cases on February 2, 1970 to enable him to determine the effectiveness of the proposed plans and to consider any objections which may have been filed;

4. On or before February 5, 1970, the District Judge shall enter an order in each of these cases approving a plan selected by him to attain a unitary school system and requiring its implementation on February 9, 1970, with leave, however, to postpone the effective date of the implementa-

tion of all or any part of a particular plan until February 16, 1970, if for good cause shown the District Judge finds that, to the extent that such postponement of implementation of the plan is allowed, it could not be achieved earlier.

5. The District Court's order shall not be stayed pending any appeal which may be taken to this court, but, in the event of an appeal, modification of the order may be sought in this court by a motion accompanied by a request for immediate consideration.

The judgments are vacated and the cases remanded for further proceedings consistent with this order.

Let the mandate issue forthwith.

By direction of the Court:

CLEMENT F. HAYNSWORTH, *Jr.*,
United States Circuit Judge

A True Copy, Teste:

SAMUEL W. PHILLIPS, *Clerk*

By /s/ JOANN C. KIRKPATRICK
Deputy Clerk

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 1136

DEBORAH A. NORTHCROSS, *et al.*,
Petitioners,

vs.

BOARD OF EDUCATION OF THE MEMPHIS CITY SCHOOLS,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI AND TO APPLICATION FOR INJUNCTION

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 1136

DEBORAH A. NORTHCROSS, *et al.*,
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vs.

BOARD OF EDUCATION OF THE MEMPHIS CITY SCHOOLS,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI AND TO APPLICATION FOR INJUNCTION

Preface

(We respectfully ask that this Brief be considered as our response to Petitioners' Motion For Injunction as well as their Petition For Certiorari.)

STATEMENT OF THE CASE

I. The Decision of the Court of Appeals

Petitioners filed in the Court of Appeals a Motion For Summary Reversal, a Motion To Require Adoption Of A Unitary System Now, and a Motion To Convene An Emergency Panel Of The Sixth Circuit. This last motion was filed on November 13, 1969, and as promptly as possible thereafter and immediately following the filing of a portion of the transcript, the Court of Appeals set the cause for argument.

Argument was presented on December 17, 1969, and both parties were given unlimited time to present their oral argument. Promptly following this argument, the Court entered the order remanding the case to the District Court. This order noted the Court's familiarity with the desegregation process in the schools of the City of Memphis since the case had been before the Court in 1962 and 1964 (1a).

Thereafter, petitioners filed a Motion For Injunction Pending Certiorari and, in acting on that motion, the Court of Appeals rendered an Opinion which stated, in part:

> "To the extent that the relevant factual context of the above cases is disclosed by the opinions available to us, we conclude that they are not analogous to the case before us. *We are satisfied that the respondent Board of Education of Memphis is not now operating a 'dual school system' and has, subject to complying with the present commands of the District Judge, converted its pre-Brown dual system into a unitary system 'within which no person is to be effectively excluded because of race or color.'* In *Alexander v. Holmes Board of Education, supra*, the Supreme Court exposed the question then before it as involving:

'the denial of fundamental rights to many thousands of school children who are presently attending Mississippi schools under segregated conditions contrary to the applicable decisions of this Court.'

"This quotation is not descriptive of the present situation of Memphis. For the school year 1969-70, there are approximately 134,000 children enrolled in the schools of Memphis, of which approximately 60,000 are white and 74,000 are Negroes. Upon the oral argument of this appeal, we asked counsel for plaintiffs to advise what he considered would be the 'unitary system' that should be forthwith accomplished in Memphis. *He replied that such a system would require that in every public school in Memphis there would have to be 55% Negroes and 45% whites.* Departures of 5% to 10% from such rule would be tolerated. The United States Supreme Court has not announced that such a formula is the only way to accomplish a 'unitary system'. We have expressed our own view that such a formula for racial composition of all of today's public schools is not required to meet the requirement of a unitary system. *Deal* v. *Cincinnati Board of Education*, (Ohio schools) 369 F. 2d 55 (6th Cir. 1966), Cert. Denied, 389 U. S. 847 (1967); *Mapp* v. *Board of Education*, (Tenn. schools) 406 F. 2d 1183 (6th Cir. 1969); *Deal* v. *Cincinnati Board of Education*, (Ohio schools) ..... F. 2d ..... (6th Cir. 1969).

"The District Judge's opinion in this case evidences his awareness of today's requirements for school desegregation and his purpose to require strict obedience by the Memphis Board of Education to all of such requirements. We are advised that the plan which he required to be filed by January 1, 1970, is now before him. We are satisfied that he will consider it with appropriate dispatch, to the end that any deficiencies in the plan now in operation in Memphis will be corrected.

"Our own familiarity with the progress of desegregation in the Memphis schools and our confidence in the

> District Judge to whom we have remanded this litigation suggests that it is not now needed that we issue the injunction asked." (App. 7a-8a).

As will be seen from the above quotation, it was petitioners' position in the Court of Appeals that the "unitary system" required by *Alexander* v. *Holmes County Board of Education*, 398 U. S. 19, contemplates that the Memphis school system must have a racial ratio of 54.3 per cent Negro and 45.7 per cent white pupils in each of the approximately 170 schools in the City of Memphis. As a corollary to this requirement and because of neighborhood housing patterns, substantial bussing of pupils will be required to reach this result. The issue in this Court, stated simply, is whether a school system must reflect the approximate racial enrollment of the system in each of the schools in that system in order to meet the requirements of the Federal Constitution or to become a unitary system as this Court has required in *Holmes County*.

Respondents respectfully urge that the Court of Appeals' decision that Memphis has converted to a unitary system is eminently correct.

II. The Memphis School System

The Board of Education of the Memphis City Schools is a corporation chartered by the General Assembly of Tennessee in 1868. It is separate from the City of Memphis and exclusive management of the Memphis school system is vested in five elected school commissioners (Private Acts, 1868-69, Ch. 30, Sec. 1).

This Board manages the twelfth largest school system in the United States. In the school year 1968 the total enrollment was 128,280 pupils, of whom 65,170 were Negro and 58,110 were white. In the present school year, total

enrollment has increased to 134,274, of whom 72,890 are Negro and 61,384 are white. The system has shown the normal growth of other large urban centers except that growth of the Memphis system has been sharply accelerated by a five-year annexation program in which substantial areas of Shelby County have been incorporated into the City of Memphis. In the present school year, enrollment increased by almost 6,000 students with predominant growth being in the number of Negro students (Ex. 1, 12a, 24a).

In 1968 more than 5,000 teachers were employed by the Memphis City Schools. Approximately 45 per cent of the faculty were Negroes. Approximately one-half of the 135 school principals are black. Black principals serve at schools with predominantly white enrollment and white principals are assigned to schools with predominantly black enrollment.

The population of Memphis is slightly more than 600,000 with substantial increases expected in the next three years as a result of the annexation program. This population is distributed racially in much the same way as the population of cities in other areas of the country. The black population tends to cluster in two or three substantial areas in the North Central and South Central portions of the City. The Central portion of the City is substantially integrated, but predominantly white (11a). The entire Eastern, Northern and Southernmost sections of the City are inhabited almost entirely by whites. The Mississippi River forms the Western boundary of the City.[1]

1. As petitioners' Brief so frequently notes, Memphis is also contiguous to Marshall County, Mississippi (Br. Pg. 4, F.N. 2). Petitioners' first reference to Marshall County makes a *false* comparison of the two school systems. If the same statistical standard applied by the Court in *Marshall County*, 409 F. 2d at 1288, 1289, is applied to Memphis, then almost 30% of the Negro students (18,625) attended desegregated schools in Memphis in

III. Desegration of the Memphis Schools

Before discussing the achievements of this school system, it is important to ascertain what goals this Honorable Court expects of a public school system. As we read the decisions of this Court in this very important field, we believe that two basic tests have been established. The first test examines results which have been obtained and, secondly, the Court examines whether the Board's conduct has been such as to evidence its good faith in removing "root and branch" every vestige of racial discrimination and indicates a continuing commitment to see that this condition remains. See *Green* v. *County School Board of New Kent County*, 391 U. S. 430; *Raney* v. *Board of Education of Gould*, 391 U. S. 443; *Monroe* v. *Board of Commissioners of Jackson*, 391 U. S. 450; and *Alexander* v. *Holmes County*, 398 U. S. 19.

A third criterion, which has not been stated by this Court but may be inferred from its decisions, might be added. We refer to establishing an attitude on the part of a school board, school administrators and faculty that makes them dedicated to the principle that discrimination in public education is morally wrong. We respectfully submit that the Memphis School System meets these tests.

We support our position, in part, with a very broad statement—*The Memphis School System has achieved as much, if not more, school desegregation than any other*

1968. In 1969 while there was a small reduction in this percentage, the number of Negro students attending desegregated schools increased to 21,746 (24a).

Incidents of statistical falsity such as this lend strong support to respondents' suggestion, reflected more fully in its Supplemental Plan, that Courts would better serve constitutional principles and education if less emphasis were placed on statistics and more emphasis placed on productive programs such as those detailed in our Supplemental Plan.

major system in the United States.[2] This is true not only with respect to the number of pupils who enjoy a desegregated education but is also true with respect to faculties, athletics, extra-curricular activities, professional associations, and every area of school activities. Evidence to support this assertion appears in the Record. For example, Dr. Gordon Foster, petitioners' desegregation expert, could not cite a system with respect to pupils or faculty that had a greater amount of desegregation than Memphis (R. 136-146). Specifically with respect to faculty, in 1969, the City of Houston received much notoriety in educational circles for the amount of faculty desegregation in that system. Houston is twice the size of Memphis and it was lauded for having 400 teachers in a desegregated situation. With only half as many teachers, thus only half the opportunity to desegregate faculties as did the much larger Houston system, Memphis has 441 teachers on desegregated faculties at the comparable time[3] (R. 287-288).

A. School Desegregation

In 1961 schools were first desegregated in Memphis when thirteen Negro children were assigned to four schools. Each year since that date has seen a substantial increase in the amount of pupil desegregation, so that by September, 1968, 18,625 Negro students were attending desegregated schools and 28,961 white students were enrolled in such desegregated schools.

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2. While petitioners' reply brief in the Court of Appeals categorically denied this statement, that brief did concede that there was ". . . some support for the Board's position . . ." if the statistical game is not played under the rules which petitioners have established.

3. The amount of faculty desegregation in the Memphis schools increased substantially in the 1969 school year.

The pace at which the invidividual schools have been desegregated is as follows:

7 schools in 1962-63
14 schools in 1963-64
17 schools in 1964-65
33 schools in 1965-66
49 schools in 1966-67
60 schools in 1967-68
64 schools in 1968-69
93 schools in 1969-70

The constant progress which has been made by the Memphis system is all the more impressive in light of the problems which tend to defeat the increase of bi-racial enrollments. The most significant of these problems is the housing pattern of the Memphis area which placed many schools and many children a distance far removed from schools and neighborhoods where members of another race reside. This housing pattern tends inevitably to create a number of schools attended solely by members of one race, particularly in the areas which are the farthest removed from the residences of any members of the opposite race. Where geography presented an opportunity for additional desegregation, this housing pattern was overcome. For example, the Board, at its own instance, phased out the former Patterson School, an all-Negro school in East Memphis, and absorbed the Patterson School population into the formerly all-white schools in the area (21a). At the beginning of this year, Getwell and Keel schools were closed and the Negro students attending those schools were assigned to the closest white schools (R. 272, 390). The distance involved, however, would make this solution inapplicable to schools located far within an area housing a single race.

A second problem diminishing bi-racial enrollments has been the tendency toward "resegregation" experienced by schools in areas of changing housing patterns. A striking example of this tendency is Hollywood School which was ideally desegregated in 1965 and 1966 (Ex. 1) but by 1968 has completely resegregated. This problem has been aggravated by the tendency of white parents to leave the neighborhood in which what might be termed a "tipping point" has been reached in the composition of the school population. This "tipping point" phenomenon is acknowledged by petitioners' desegregation expert (R. 178-183). However, steady progress in the system's overall desegregation has been made in spite of losses in such individual instances.

Trial Exhibit 2 shows the rapid pace at which school desegregation has been achieved in the City of Memphis. In 1968, of the 123,280 pupils in the system, 47,586 of these pupils attended school with a mixed racial enrollment. Of course, petitioners are quick to insist that some of these schools have a small minority of the opposite race; hence, they should not be counted as desegregated schools. In all candor, respondents, in their statistics, count each school regardless of the racial ratio as a desegregated school so long as the school has bi-racial enrollment. Certainly to the pupils attending that school, it is desegregated whether or not petitioners choose to describe it as such since black students and white students are studying and working together and otherwise in association in a single school.[4]

4 We note that petitioners' statistics are based upon a rule that one does not count a pupil as attending a desegregated school unless at least 10 per cent of the enrollment of that school is of the opposite race. We are not advised as to the source of or the authority for petitioners' rule or why they have fixed that percentage rather than some lesser or greater amount. It is worth noting that this rule tends to detract from a careful study of actual conditions in the schools and lends unwarranted support to a charge of discrimination.

Suffice it to say, so far as students attending that school are concerned, you would have some difficulty convincing them that they were not attending a desegregated school.

While a school may have only one or two students of the opposite race in a given year, history of this school system shows that the process of desegregation develops rapidly and this single student is joined by others in a short time. Central High School and Messick, so much criticized in petitioners' Brief, page 7, are typical examples of the point we make. Central has a normal enrollment of approximately 1,200 students. In 1966, 33 Negro students attended Central. In 1967, 66 Negro students were enrolled. In 1968, this enrollment had increased to 115, and in the current school year, 219 Negro students attend Central. With respect to Messick, the elementary school enrollment in 1968 was 414, of whom 27 were black but by 1969, Messick Elementary had an enrollment of 103 Negro students and 342 white students.[5] Other examples of this process of desegregation appear in Exhibit A which is appended to this Brief.

The case was tried in the District Court on the basis of the 1968 enrollment. The 1969 school year shows continued improvement. Almost 70,000 (52.1%) students, compared with 47,536 in 1968, out of the 134,274 enrolled in the Memphis system attend school with members of the opposite race. Of the 61,334 white pupils enrolled in the system, 48,241, *more than 78%*, attend school with a bi-racial enrollment. With respect to black students, 21,746 (exactly 30%) attend bi-racial schools (24a).

5. It might be noted that petitioners' "glaring island" argument in support of its gerrymandering charge, which is based in large part upon the zone lines for Central and Messick, would seem to be totally refuted by the racial balance at those two schools. The third predominantly white school referred to in the "glaring island" argument is Vollentine Elementary. The current enrollment at Vollentine is 441, of whom 285 are Negro students.

It is interesting to observe, too, that out of the approximately 170 schools serving the City of Memphis, only 11 schools have total white enrollment (29a). This does not mean, however, that these students are educated in a white isolated world. In addition to Negro faculty members, the Board sponsors and directs inter-racial exchanges through its Supplemental Plan and all of their inter-scholastic athletic programs are totally integrated.

B. Other Areas of Desegregation

Memphis is different from many other school systems in the United States in that Memphis has taken affirmative steps beyond the letter and the spirit of court orders to bring about a desegregated and non-discriminatory school system. As early as 1964, the Court of Appeals took note of the Board's voluntary commitment to accelerate the so-called "grade-a-year" Plan of Desegregation (See *Northcross* v. *Board of Education*, 333 F. 2d 661). The Inter-Scholastic Athletic Program and Summer Schools were desegregated several years ago without court order. Patterson School, a school with Negro enrollment, was closed without the command of a Court order so that those students could be assigned to a school theretofore attended only by white students. Again without Court order, plans were made to close Getwell and Keel Schools for the same purpose. Faculty desegregation began without court order and, most important, the Board of Education has formulated what it describes as a "Supplemental Plan" which it hopes and expects will go far toward achieving good race relations. This Supplemental Plan is in the Appendix and will be more fully discussed in a subsequent portion of this brief (b).

To state the matter quite simply, the Board of Education has exerted its best efforts to remove every conceivable

vestige of discrimination in this school system. More important, however, and long prior to *Green*, *Monroe*, *Raney* and *Holmes County*, school officials in Memphis had an affirmative attitude toward desegregation and took positive steps to make this meaningful. We have stated some of the voluntary, affirmative acts that the Board had taken in recognition of its duty to eliminate "root and branch" discrimination, but we believe that one particular event merits special comment.

It has often been said that the attitude of one's employees reflects the attitude of the employer. If this statement has merit, then we feel that the action of the Memphis Education Association (M.E.A.) speaks well of this Board. The M.E.A. is the professional teachers association serving this system and in 1968 ninety (90%) per cent of the more than 5,200 teachers employed by the Board were members of the M.E.A.

First, we note that this Association has been desegregated for many years and long prior to the desegregation of the corresponding state association. This desegregation occurred without a suggestion from the Court.

Second, even though the association has a majority of white teachers, the membership, in 1968, elected an outstanding Negro classroom teacher, Mr. James Catchings, as Vice President and in 1969, Mr. Catchings was elected to the office of President Elect. It is respectfully suggested that had this school system, through its elected Board and Administrative staff, been operated and managed by white racists, as petitioners imply, such an election would not have occurred.

In 1967, the Board, by nomination of the M.E.A., received the National Education Association—Thom McAn "Award of Excellence", the highest honor that can be paid a school system in the United States. The award was

given because of the excellent relation between the School Board, its staff and other professional personnel. This award would hardly have been given to a school system dominated by racists. . . .

Evidence also of the Board's affirmative attitude appears in the pamphlet "Dialogue of Dignity". This pamphlet was prepared by a bi-racial committee of school teachers and is distributed throughout the school system and the community. It was based, in part, on a number of speeches given to service clubs and other organizations in the community by Mr. E. C. Stimbert, Superintendent of the Memphis Schools. Mr. Stimbert, a native of Nebraska where he served as a public school teacher, principal and superintendent, was appointed superintendent of schools the year prior to the first desegregation in Memphis. We make this point to show that as promptly as he could do so after assuming his office, he and the Board began this process.

Evidence of the Board's positive attitude of encouraging desegregation appears with respect to Northside High School in the North Central section of the City. At the time Northside was planned, this was a racially-balanced neighborhood and the school was to be a showcase so as to maintain the mixed racial characteristics of the neighborhood (R. 376-377). The school was unique in that it offered a full academic as well as a full vocational program. The school was staffed with outstanding educators. In the interim between planning and opening the school, the neighborhood tended to resegregate so that by the opening of school in 1967, the enrollment was 932 Negro students and 234 white. In 1968, out of a total enrollment of 1,313 pupils, only 73 of them were white. The Board constructed this very expensive building and assigned some of the best faculty members that were available with the

view of encouraging desegregation and, while its efforts did not meet with the hoped-for result, Northside still remains a desegregated school and an example of the Board's efforts to use a construction program to achieve desegregation. The problem, of course, is the fact that the Board does not control where people in our mobile society will live (R. 385).

We cite this example not by way of showing the difficulty or pointing out a failure and we trust that the Court will not consider it in that light. We cite this example purely in support of the Board's position that it is dedicated whether it be in the area of construction, facilities, activities, pupil assignment, or teacher assignment to achieve a racially desegregated and non discriminatory school system. Certainly this example shows that this objective is not easily obtained but the fact that results may not always be as desired has not in any sense lessened the Board's determination to make every effort to achieve a desegregated system.

The foregoing examples support our statement made earlier in this brief that we believe this Court has established three criteria to meet its demand for a non-discriminatory school system. These examples demonstrate that this school system meets the third and perhaps the most important of these criteria, namely, a dedication to achieve a total non-discriminatory system.

C. The Board's Supplemental Plan

Further evidence of the Board's dedication to this third criterion is reflected by the Supplemental Plan. We wish to emphasize that this plan was the product of a school superintendent and a Board who are dedicated to complying with what they deem to be both the letter and the spirit of the law. It was not the result of the decision

of a judge who, while learned in the law, may be somewhat isolated, thus inexperienced, in the field of education. Rather, it was a voluntary program devised after many days of study that this Board genuinely believes will accomplish something for good race relations not only in the school system but in the entire community.

Respondents are pleased to note that during the trial, petitioners, on two occasions, commended the Supplemental Plan (R. 372, 397).

The testimony of Mr. Stimbert, the Superintendent, beginning page 339 of the Record, and of Mr. Bailey, the elected President of the Board, beginning at page 395, details the background of the plan, the people who helped to formulate it, and the commitment of the Board to see that it is successful. We shall not lengthen this brief by repeating the testimony of these officials but will summarize their statements by saying that this is the Board's sincere effort to penetrate the wall of racial isolation with the hope that it will bring racial harmony to the community and quality education to the schools.

We have attached to this brief the Supplemental Plan and we shall not detail its provisions except to note that a highly qualified Negro school principal has been appointed Director of Race Relations[6] and is presently administering programs to achieve the objectives of the plan. It is important to state also that the Board is funding this program without Federal assistance. This funding includes not only the salaries involved but, quite naturally, such a program requires a certain amount of transportation. This transportation is either furnished by facilities

6. The District Court directed that the Board should change the title of the Director of this program from "Director of Human Relations", as suggested by the Board to "Director of Desegregation" (19a). Subsequently, the Court approved the title "Director of Race Relations".

the P.T.A., or to the extent funds are available, the Board rents county school busses and drivers during the mid-day hours for this purpose.

We have appended to this Brief one of the reports reflecting the actual operation of the Supplemental Plan (b).

D. The Board's Assignment and Transfer Policies

Assignment and transfer policies presently applicable were worked out by the Board and the Department of Justice in 1966 and were filed in the District Court on July 22, 1966, as a part of the modified plan of desegregation. These policies were incorporated in the Board's plan filed pursuant to the District Court's decision of May 15, 1969 (b).

Specifically, the Board's plan provides, first, that each pupil shall be assigned to the *unitary* school zone within which the student's residence is located. The Board is then obligated under the revised plan to grant transfers so long as the physical facilities at the school to which the transfer is sought are adequate. With respect to transfers from a school in which the pupil is in the racial majority to a school in which he would be in the racial minority, these transfers are granted almost unconditionally and, as appears from items 3 and 5 of Section IV, preference is given to a transfer which will achieve greater desegregation.

It is to be observed that not only is no person ". . . effectively excluded from any school because of race or color", as directed in *Holmes County*, but the reverse is true—transfers to achieve greater desegregation are given preference.

As the District Court's Opinion states, the primary thrust of petitioners' proof and argument was that all trans-

fers, except majority to minority, should be eliminated. The District Court found, however, that in some instances the Board's transfer policies aided desegregation; thus, petitioners' position actually does a disservice to Negro students and those whom petitioners purport to represent (13a). As an example of our criticism of petitioners' position in this respect, we refer to Northside High School. As we have noted, it is one of the newest high schools in the system and the most expensive school ever built in Memphis. If petitioners' position is sustained, then 258 Negro students who transferred into Northside would be denied the right to attend a desegregated school since their transfers were to a school in which their race was in the majority. Refer again to the Vollentine School. Sixty-one Negro students transferred from the Hyde Park School into Vollentine where their race is in the majority. These children would be denied the right to attend a desegregated school.

Or, look at the other side of the coin. The Board closed Patterson School and assigned those Negro students to White Station which had previously been an all white school. The present enrollment at White Station Elementary School is 391 white pupils and 127 Negro pupils. While these 127 Negro pupils remained in their neighborhood school, two Negro pupils sought and were granted transfers to predominantly Negro schools. In White Station, grades 1 through 12, nine Negro students sought transfer to predominantly Negro schools. Must the Board deny these black students a minority-to-majority transfer and the right to attend the school of their choice, if for some reason *other than race*, they choose to attend a particular school?

Petitioners' position ignores these Negro students in their zeal to insure that the 1 or 2 white students that are

zoned in the Carver or Manassas zone are compelled to attend those schools.[7] It is interesting to observe where those students attend school. Almost without exception, transfers these students receive are to a desegregated school. They are not transferred to a school with an all white enrollment. For example, the white students in the Carver and Manassas zones attend Central, a heavily desegregated school, and the tendency of such transfers is to retain the desegregated status of the school to which the pupil transfers.

The Board's transfer policy must be considered also in the light of the residential housing patterns that exist in this community. The inner city is either heavily black or desegregated; while the outer city is almost exclusively white. The black students in the inner city cannot readily transfer to all white schools in the suburban area and, conversely, because of the same transportation difficulties, a white student cannot readily transfer to the predominantly black school in the inner city. Black students do have the opportunity, however, under the Board's

white student cannot readily transfer to the predominantly black school in the inner city. Black students do have the opportunity, however, under the Board's policy to transfer to such desegregated schools as Northside, Vollentine, Central, White Station, Bruce, Bellevue and many other schools, even though in some instances their race may be in the majority. If the Court grants to petitioners the relief which they seek with reference to transfers, this opportunity will be denied to these black students. Of course, one white student would be assigned to Lester and two or three to Booker T. Washington, but we doubt that much would be achieved by such assignments.

In concluding this discussion, we wish to respond to the statement on page 6 of petitioners' brief that the Board "frankly admitted" that it seeks to retain its transfer pol-

7. The District Judge carefully analyzed the insignificant effect of cancelling such transfers (14a).

icies so as to permit students desiring to avoid desegregation to do so. This assertion is false. The District Court found that the Board's transfer policies promote school desegregation and that finding was eminently correct.

E. Criticism of the Court of Appeals

The Court of Appeals is criticized for its decision that Memphis has a unitary school system.[8] With somewhat more dubious motives, the Court is criticized for not summarily granting petitioners' several motions. The tenor of this latter criticism carries with it the implication that the Court of Appeals has engaged in dilatory tactics so as to frustrate or delay the granting of petitioners' rights. This criticism is wholly unwarranted.

The delay in hearing petitioners' case was due in large part, if not solely, to the fact that petitioners did not see fit to order the transcript of the proceedings in the District Court. When this oversight was discovered, respondents requested that the transcript be prepared. We called the attention of the Court of Appeals to the fact that petitioners sought a decision of that Court without the transcript of some eight days of testimony in the District Court.[9] We suggested that a case of such importance to this school system should not be decided summarily. The Court of Appeals agreed with this suggestion. Of course, there is no way to determine how much more promptly the Court of Appeals could have acted upon petitioners' several

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8. This is the same Court of Appeals that is cited on page 3 of Petitioners' brief as having found that Memphis school zones had been "gerrymandered". The panel in 1964 was comprised of Judges Weick, O'Sullivan and Cecil, while the panel in 1969 was comprised of Judges Weick, O'Sullivan and Celebrezze.

9. Even now the transcript includes only the hearing of petitioners' proof and respondents' rebuttal held on February 6 through 11, 1969. A major portion of respondents' case was presented on August 23 and November 8 and 11, 1969. This transcript has been ordered.

motions if petitioners had seen fit to order this transcript. Suffice it to say that it appears somewhat unseemly to criticize the Court of Appeals for delay in view of petitioners' own oversight.

The Court of Appeals may not have indulged in that instant justification that some of these cases from other jurisdictions may warrant. It acted, however, with exceptional promptness. First, it directed the District Court Clerk to forward all exhibits in the case as soon as petitioners' first motion was filed even though the transcript had not even been ordered. As soon as the Court of Appeals received a portion of the transcript it immediately set the cause for argument and its decision in the case was rendered two days later.

I. The So-Called Indicia of a Dual System

Before presenting our argument, we would like to respond to what petitioners call the indicia of a continuing dual system (pp. 11-). Petitioners seek support for this charge by quoting from the Opinion of the District Court. As we read that quotation, it simply states the opposing positions of the parties and does not conclude that school zones have been gerrymandered.

Petitioners attempt to support this charge [illegible] ing the conclusion of their Title VI expert [illegible] that the existing zone lines followed traditional boundaries between Negro and white neighborhoods [illegible] gerrymandered. That effort fails. Apart from the remote [illegible] testimony on frequent occasions that he had formed no opinion as to the Memphis system because he had not devoted sufficient time to a study to permit him to reach conclusions (R. 66-70, 108). The most patent failure, however, rests in the very first example referred to by Dr. Foster (the oft-cited Kleinfeld-Valentine area) (R. 40-

Klondyke has all black enrollment but the enrollment at Vollentine in 1968 was 197 white and 213 Negro students. The other examples he gives together with the school enrollment are Maury (181 white and 48 Negro), Bruce (422 white and 81 Negro) and Merrill (217 Negro and 27 white).

It will be observed that each of the examples reflects a change from predominantly white to predominantly Negro. Short of racial balance we believe that these schools are examples of excellent pupil desegregation rather than gerrymandering. If these schools and the schools cited on page 3 of the petition are examples of this Board's efforts to gerrymander, then we must be a disappointment to the bigots that petitioners [illegible] we undertook to serve.

A final statement is required by the reference to the Court of Appeals decision in *Northcross*, 333 F. 2d 661. That opinion was critical of the Vollentine zone lines. That decision was rendered in 1964 and now, five years later, petitioners still must rely on this event even though the enrollment at Vollentine is about as ideally balanced as any school in the United States.

With equal opportunity to demonstrate respondents' good faith, it should be observed that within days after the Court issued its mandate in 1964 the Board revised its zone lines. Copies of the revision were promptly furnished petitioners' counsel, as soon as the Court's mandate was spread of record. Within a matter of days prior to the date within which petitioners' counsel must designate any additional school zone which they felt was not unitary, they [illegible] to Motion Docket Jan. 31, 1964. No complaint was made to that request nor was any objection registered to the revised school zone maps. Almost annually since 1964, the Board furnished with the District Court revised school zone maps and maps or tables showing the racial makeup of each school and the names and addresses of pupils enrolled in the various schools.

Now, five years later, the charge of gerrymandering is revived and, most remarkably, they seek to support that charge by reference to a school whose enrollment almost precisely reflects the racial balance of the entire system.

ARGUMENT

As we view *Holmes County* and *Carter*, No. 944, O. T. 1969 (Aug. 4, 1970), they resolved school boards that, according to the Court of Appeals for the Fifth Circuit, were still operating dual school systems. In the case at bar the Sixth Circuit holds that Memphis is not operating a dual system—that it has achieved a unitary system. The marked distinction between *Holmes County* and this case would seem to dictate that we first respond to Part II of petitioners' argument since Part I of that argument contains the circuitous assumption that the Court of Appeals' decision is incorrect.

I. What Is a Unitary System

One review of *Carter* lends little assistance to defining unitary schools. The most recent guide for a definition of the term appears in Justice Black's Order in *Holmes County*. There it is stated:

> "1. The Court of Appeals' order of August 28, 1969 is vacated, and the cases are remanded to the court to issue its decree and order effective immediately declaring that each of the school districts here involved may no longer operate a dual school system based on race, or color, and directing that they begin immediately to operate as unitary school systems within which no person is to be effectively excluded from any school because of race or color."

And in *Green* this Court stated:

> "... School boards such as the respondent then operating dual systems were nevertheless clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system *in which racial discrimination would be eliminated root and branch*." 391 U.S. at 437.

Let us consider the Memphis system in light of those statements.

A. Memphis Operates a Unitary System

Memphis, as does every other urban school system in the United States, operates what are termed neighborhood schools. In Memphis every student, regardless of race, is now and has been for a number of years, assigned to the school serving his unitary zone of residence. No student, whether for race or any other reason, is excluded under any circumstances from the school serving his unitary school zone.

Memphis, however, goes further than that in that students are permitted transfers and, as we have noted, preference is given to a student if his transfer will tend to increase school desegregation. Not only, therefore, are students not excluded from any school because of race, but on the contrary, racial factors are considered only if desegregation is aided. Certainly Memphis meets the "unitary" rule in *Holmes County*.

Further demonstrating our compliance with *Holmes County* and *Green*, it must be noted that respondents have taken numerous affirmative steps to remove discrimination "root and branch" and to encourage desegregation. Voluntarily, the board desegregated faculties and its interscholastic athletic programs. Voluntarily, schools with black enrollment were closed so as to desegregate adjacent

white or desegregated schools. The most expensive school ever constructed by the Memphis system was located in an effort to preserve the desegregated characteristics of a neighborhood, and there were other instances which we have heretofore noted in this brief such as the attitude of the professional association which reflects the attitude of this Board in the field of race relations.

B. Memphis Has Long Complied with Holmes and Green

The Court's Opinion in *Holmes County* does not recite local conditions in the systems there involved but since its petitioners have so frequently noted, Memphis is adjacent to Mississippi, we know and we believe that this Court is aware that Memphis has operated its schools in a fashion somewhat different. In *Green*, *Raney* and *Monroe*, essentially the same conditions existed as were presented in *Holmes* county. Justice Brennan noted in *Green*:

> Racial identification of the system's schools was complete, extending not just to the composition of the student bodies at the three schools but to every facet of the school operations—faculty, staff, transportation, extracurricular activities and facilities. In short, the State acting through the local school board and school officials organized and operated a dual system, part White and part Negro. 391 U.S. at 435.

The Memphis system is dual, part white and part Negro. Of the pupils it contains and in spite of the neighborhood racial patterns, 40% of all black students attend school with white students and 78% of all white students attend school with black students. And again we remind the Court that the elimination of discrimination has been emphasized

C. Racial Balance

Let us now discuss what we deem to be the dominant issue in this case, racial balance. Petitioners' position, stated quite candidly and directly to the Court of Appeals, was that in order to achieve the label of "unitary" each school within the system must be racially balanced. That Petitioners would permit a 10 per cent variance. In Memphis each school must have approximately 54.3 per cent Negro students and 45.7 per cent white students.

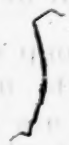
Racial balance, of course, means that pupils must be transported to obtain the required enrollment percentage and the neighborhood school concept is no longer a Constitutionally acceptable method of school assignment in the public schools. It is time that this Honorable Court speak on this issue since there are far too many Courts, like the IV Circuit experts and HEW representatives who have been persuaded that this, and only this, will mean a return to this Court's requirements for a unitary system.

It is interesting to observe the adroit way in which petitioners treat the question of racial balance in the Court. It is mentioned only in footnote 9 on page 30. As mentioned quite clearly to the Court of Appeals, Opinion, this issue was presented more candidly to them in that Court.

The reason for the non-mention of including the issue here is quite simple. Petitioners do not want a decision of the Court ordering racial balance. They could read a decision of the Court to mean the Memphis school system goes to the Title IV Centers. It is hoped that means that the Constitutional requirement for racial balance remains.

Of course once the District Court is trapped by a Title IV plan that requires racial balance it becomes difficult to defy petitioners and the so-called outside expert who has been called upon or directed to aid the Court.

We appreciate full well that this Court has never rendered an Opinion directing racial balance in the public schools. In that regard the Court of Appeals stated:



segment of population between the ages of six and seventeen. In a lawsuit involving the views of the segregationists versus only the views of the N.A.A.C.P., someone must win and someone must lose. Unfortunately, therefore, these important issues are decided by the Court without hearing the voices of most of the people whose views are represented neither by the N.A.A.C.P. nor the segregationists, but the law of the land in the area of school desegregation is written by the Court in a controversy between these two extremes as they become, when they confront each other.[11]

In this connection it is worth noting, as evidenced by the Opinion of the Court of Appeals which has followed the progress of this school system since 1962, that this Honorable Court is not reviewing the operation of a defiant or recalcitrant school board, even though petitioners seek to paint that picture. Nor is the Court considering the decisions of reluctant appellate and district courts. On the contrary, this Court is considering the action of a school board and courts who have demonstrated their dedication to complying with "the law of the land".

We do not, however, want "the" law of the land established by petitioners and their Title IV "experts"[12] who thus far have applied their views on selected school systems only. If racial balance is the law, then it should be stated, so that it will be uniformly applied rather than

11. Of necessity some of our comments can be deemed critical of the Legal Defense Fund. In making these critical comments, we do not intend in any way to detract from the vitality that group for its past achievements in the field of human and Constitutional rights. But any group or organization can err and while we respect the Fund greatly for its past achievements we would be less than candid if we did not comment on a position which we deem damaging to education.

12. The Memphis school system has been unimpressed with the Title IV representatives and we respectfully urge the Court to note the qualifications and background of petitioners' expert in this case (R. 109-112, et seq.)

discriminatorily applied to those school systems who have been misguided by some political figure who gains notoriety only for his bigoted views.

Perhaps the most remarkable facet of all of this is the difficulty that one has in speaking for the great majority of the people and all of the school children. Those represented by the Fund say "racist" if the programs which they devolve to get even with the segregationists are not adopted. By the same token, the segregationists attack with a louder voice if their "segregation-forever" philosophy is not followed. Generally, the Courts have only these two courses to follow in this major battle that shapes educational programs in this country. The Courts are caught on the horns of a dilemma—Do we follow the segregationists' philosophy, or do we follow the programs suggested by the N.A.A.C.P.? That decision is not a difficult one to make, given only those two alternatives. But we respectfully submit that there is a third course and the Memphis School System gives the Court an opportunity to take that course by giving the Board's Supplemental Plan an opportunity to produce results.

D. In Defense of Neighborhood Schools

In the District Court, just as here, the principal thrust of petitioners' case was its prayer that the Title IV experts prepare an integration plan for Memphis.[13] Racial balance was treated most deferentially. As a result, no proof was introduced by respondents to explain or defend the neighborhood school concept, which as we have

13 As we have noted, employment of Title IV experts is practically tantamount to ordering racial balance; hence, petitioners need not directly propose this course. Regrettably to a Title IV expert, racial balance is an attractive vehicle. It is a simple mathematical computation that produces a result, but a result that gives no consideration to children, white or black, nor to education. It requires no thought or ingenuity such as that demonstrated by this Board's Supplemental Plan.

noted, is the fundamental method of pupil assignment in practically every urban school system in the United States.

We can, however, defend this concept with matters of common knowledge and reference to judicial decisions. *Deal* is perhaps the leading case that directly meets the issue of racial balance. We quote that Court's statement concerning the neighborhood school:

> "Appellants, however, pose the question of whether the neighborhood system of pupil placement, fairly administered without racial bias, comports with the requirements of equal opportunity if it nevertheless results in the creation of schools with predominantly or even exclusively Negro pupils. The neighborhood system is in wide use throughout the nation and has been for many years the basis of school administration. This is so because it is acknowledged to have several valuable aspects which are an aid to education, such as minimization of safety hazards to children in reaching school, economy of cost in reducing transportation needs, ease of pupil placement and administration through the use of neutral, easily determined standards, and better home-school communication. The Supreme Court in *Brown* recognized geographic districting as the normal method of pupil placement and did not foresee changing it as the result of relief to be granted in that case. *Brown* v. *Board of Education*, 347 U. S. 483, 495, note 13, question 4 (a), 74 S. Ct. 686, 98 L. Ed. 873; *Brown* v. *Board of Education*, 349 U. S. 294, 300-301, 75 S. Ct. 753, 99 L. Ed. 1083 (1955). But see *Blocker* v. *Board of Education of Manhasset*, 226 F. Supp. 208, 221-222 (E.D.N.Y. 1964).
>
> "Because of factors in the private housing market, disparities in job opportunities, and other outside influences (as well as positive free choice by some Negroes), the imposition of the neighborhood concept on existing residential patterns in Cincinnati creates some schools which are predominantly or wholly of one race or another. Appellants insist that this situation, which

they concede is not the case in every school in Cincinnati, presents the same separation and hence the same constitutional violation condemned in *Brown*. We do not accept this contention. The element of inequality in *Brown* was the unnecessary restriction on freedom of choice for the individual, based on the fortuitous, uncontrollable, arbitrary factor of his race. The evil inherent in such a classification is that it fails to recognize the high value which our society places on individual worth and personal achievement. Instead, a racial characterization treats men in the mass and is unrelated to legitimate governmental considerations. It fails to recognize each man as a unique member of society.

"In the present case, the only limit on individual choice in education imposed by state action is the use of the neighborhood school plan. Can it be said that this limitation shares the arbitrary, invidious characteristics of a racially restrictive system? We think not. In this situation, while a particular child may be attending a school composed exclusively of Negro pupils, he and his parents know that he has the choice of attending a mixed school if they so desire, and they can move into the neighborhood district of such a school. This situation is far removed from *Brown*, where the Negro was condemned to separation, no matter what he as an individual might be or do. Here, if there are obstacles or restrictions imposed on the ability of a Negro to take advantage of all the choices offered by the school system, they stem from his individual economic plight, or result from private, not school, prejudice. We read *Brown* as prohibiting only enforced segregation." 369 F. 2d, at 60, *cert. den.*, 389 U. S. 847, 88 Sup. Ct. 39, 19 L. Ed. 2d 114.

Of necessity, Courts approach racial balance, and pupil transportation to accomplish racial balance, from a purely legal standpoint. An educator must approach this problem from the standpoint of education and what the transporta-

tion of tens of thousands of children across the city twice each day will mean to those children and to their education.

As noted, only briefly was this subject referred to in the District Court (R. 349-350) but simple common sense supports the educator's objection. Consider, first, the financial aspects of racial balance. Unlike rural systems, Memphis does not furnish transportation to students except those who are physically handicapped or are awaiting the opening of a new school (12a). But with those few children we know that it costs approximately $70.00 per year per student. With an annual expenditure of only $518.00 per year per pupil in Memphis, it can be readily seen that school transportation for a major segment of our school population is simply a luxury that Memphis and most school systems cannot afford. The District Court was well aware of the competition which this Board faces for its share of the tax dollar (12a).

But as compared to children, finances are secondary. What does racial balance do to children? Consider disruption of the pupil's day. Transportation over the clogged streets of a city differs markedly from transportation over the comparatively vacant highways of the rural community so that a substantial portion of the pupil's day will be spent in the heretofore simple process of getting to his neighborhood school. Traffic conditions during the opening hours of school are already hazardous and pupil transportation would only increase the safety problem for school children and the community.

Consider next the ever-increasing problem of school attendance. For many, attending school is not the most attractive thing that they do. How much less attractive will school become if the child must leave an hour earlier than usual and return home an hour later? Further, it is a matter of common knowledge that many students work

after school as newsboys or in a variety of other fields and a bussing program will effectively eliminate the income and the training which those students derive from their employment.

Perhaps most important of all of the factors to be considered is the effect on recreation, organized activities and the social life of the people in the low economic neighborhoods. In those neighborhoods, social activities and enjoyment are almost invariably tied to three areas—the church, the school and the community house or park, with the school furnishing the common area at which all children can meet and to which all parents can be invited for educational, cultural or social programs. These people do not have the country club or the university club of the more affluent. Thus, if a substantial portion of those children, black or white, are assigned to attend schools in areas remote from their neighborhoods, the use of schools for these extra-curricular, social and cultural activities will be sharply curtailed, if not eliminated. A school principal and faculty simply cannot establish that rapport with children who are not their students to make the school useful for such purposes.

Finally, consider what at first might seem to be a minor factor—communications between the school and the home. In cases of illness or discipline, there must be contact between parent and principal or teacher. In this day of such a mobile society,[14] this is already a problem but that problem will only be magnified, to the harm of children, by the remoteness resulting from racial balance.

Aside from the foregoing, racial balance is an administrative absurdity, as evidenced by the enrollment figures in this school system. In 1961 total enrollment in Memphis

14. In Memphis 6,000 addresses are changed each 20 days (R. 385).

was 103,716. Of that total 54.2 per cent were white and 45.8 per cent were Negro. In 1965 and 1966, the enrollment by race was essentially equal. By 1969, the 1961 racial ratio was precisely reversed in that only 45.7 per cent of the enrollment is white. To meet these statistical changes and to retain racial balance would require the reassignment of numerous black and white children each year. No child could feel secure in his school assignment.

Already too few people give consideration to children in the attack on those who proclaim "Segregation Forever" and when this fact is compounded by the mobility of our society and the impermanence that many children already have with their surroundings, it would seem that this Board's Supplemental Plan offers a more effective and more workable alternative to racial balance.

We do not question the sincerity of the petitioners in their zeal to compel racial balance. Nor do we question the sincerity of a court that would order this to be done. We do believe, however, that such a decision will do harm to both race relations and education and those are the two areas that this Court and this Board are dedicated to improving. We also appreciate full well that should this Court render a decision directing racial balance, it will be done in all sincerity and based on sound judgment that the Fourteenth Amendment to the Constitution compels such a decision. But while realizing the sincerity of the Court, we know that people who are equally sincere can do grievous harm to valuable public institutions and the Court's sincerity would be little compensation if we are right that racial balance may only be achieved by the transportation of thousands of school children and the very serious disruption to public education that would ensue.[15]

15. At several points in their short brief, petitioners seek to influence the Court's decision in this case by reference to what has happened to our neighbors in Marshall County, Mississippi.

It is time now for the Court to lay the ghost. It is time for the Court to announce to this unsettled country, both black and white, that desegregation of a public school system does not require balancing of the races—that once discrimination has been eliminated "root and branch", children may attend their neighborhood schools.

E. The Memphis Plan Is Superior to Racial Balance

What is the goal which this Honorable Court seeks? We believe that the Court is saying to educational systems in the country that they must exert their full efforts to breaking down the wall of racial isolation. Assuming that to be true, how then can it best be accomplished?

We most respectfully urge that in considering these questions, the Court study this Board's Supplemental Plan. It would, perhaps, be too much to expect that this plan is going to produce an instant end to racial bias in the community. The reason for this is quite simple. This Board does not have the opportunity to educate parents nor to control where parents move with their children. We do have the opportunity to educate children, where the future of our country lies, and through this Plan, we know that much will be accomplished between black children and white children in the field of race relations.

II. The Grant of Certiorari and the Motion for Injunction

We shall now comment on petitioners' Motion for Injunction and that section of the Petition styled "Reasons

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They note that at long last, the children they represent in Marshall County have finally been given their Constitutional right to attend a racially-balanced school by being transported each school day across Marshall County, while the children that petitioners represent in Memphis have the right only to attend their neighborhood school or any other school in the City of Memphis that they choose if their attendance at such other school will increase the amount of desegregation.

for Granting the Writ". As a preface to these comments, we wish to repeat a statement that we made earlier in this brief—The Memphis School System has achieved as much, if not more, school desegregation as any other major system in the United States. Petitioners refute this statement only by playing the statistical game under their own set of rules.

A. An Injunction Is Not Warranted

The Motion for Injunction may be divided into two sections. In the first section, petitioners cite authorities supporting the Court's right to issue the injunction. In view of the decision in *Carter*, respondents must concede petitioners' point that the Court has full authority to issue the injunction. The question, however, is not that simple. The question does not concern the authority of the Court but whether, on the merits and considering all of the facts of the case, this Court should exercise this extraordinary jurisdiction. We respectfully suggest that it should not.

The second section of the Motion for Injunction is petitioners' rather unique approach to the issue of racial balance. They do not ask the Court to reverse the Court of Appeals' holding that racial balance is not required. They do not meet the issue that so concerns educators throughout the country. In fact, the casual reference to this question in their brief lends the impression that they do not want the Court to meet this issue. Certainly their Motion for Injunction does not refer to this issue. Their prayer in the Motion for Injunction is a very simple one—requiring the Memphis Schools to prepare "with the assistance of H.E.W. or the H.E.W.-Funded University of Tennessee Title IV Center a plan of complete integration". That sounds somewhat innocuous.

Respondents know now, though they did not know in the District Court, that a requirement for a Title IV Plan

is but a sophisticated way of imposing racial balance on this school system. We ask petitioners to respond to this statement. Petitioners should be as direct with this Court as they were with the Court of Appeals.

The question, therefore, in the injunction application is quite simple—Should this Court precipitately or otherwise grant the injunction without argument and without the due consideration normally given to litigants by this Court, reverse the Court of Appeals and by the injunctive process, impose racial balance on the Memphis School System? We do not believe that such hasty action is warranted for a school system that has as much, if not more, racial desegregation as any other system in the United States.

B. Should the Court Grant Certiorari

In one sense, respondents join petitioners in their prayer that this Honorable Court grant the writ. Naturally our reasons for this joinder are different from those stated by petitioners.

This is an unusual position for a respondent to take but we take this position out of a sense of responsibility to educators and school children throughout the country because we desire so strongly that this Court establish the law of the land with respect to racial balance—this educational and administrative absurdity. This topic is becoming too important for the Court to ignore the issue. But the question should be resolved in an atmosphere of reasoned judicial consideration and not by injunctive process. Memphis, Tennessee, or Marshall County, Mississippi, should not be required to racially balance their schools if the schools in Albany, New York, Bismarck, North Dakota, or Seattle, Washington, are not balanced. In a word, whatever the law is with respect to racial balance, it should be

the law of the land and not an administrative ruling decreed by those who think they are reflecting what this Court requires for certain school systems only.

1. A Suggestion for the Court's Consideration

The issue of racial balance and the bussing of children to achieve that balance was not tried in the District Court. In fact, it is only in recent months that petitioners and their Title IV experts have begun using this tool. It would seem appropriate, therefore, that before this Court establishes such a far-reaching principle that will consume millions of dollars otherwise devoted to education, it would be wise to investigate in depth the impact of racial balance on both Constitutional rights and education. We propose and respectfully request that this Court consider the appointment of an outstanding individual or group, learned in both the law and public education, to serve as a Special Master or Special Panel to investigate this question from both an educational standpoint and a Constitutional standpoint. This Special Master should report to the Court his findings with respect to the impact on all children, black and white, and the impact on public education of a requirement for racial balance. We trust that the Court will not consider this suggestion as in any way a reflection on the ability of the Court to resolve this complex problem. We know and deeply respect the fact that this Court is learned in the law. On the other hand, we know that this Court is somewhat inexperienced in the field of public education and we believe that the Court will want all of the information that it can possibly acquire with respect to this important question before making a decision that will have such a tremendous impact on literally millions of children and hundreds of school systems.

C. What Constitutional Rights?

Petitioners' brief contains this statement:

> ". . . A Negro child in Marshall County, Mississippi, is granted his constitutional rights by order of this Court, while a Negro child across the county (and State) line a few miles away is denied these rights by the decision of a Court of Appeals. In view of the possible effect on all school districts, and in particular those within the Sixth Circuit, this Court cannot allow such different treatment to go uncorrected." (Pg. 15).

Consider for a moment the Constitutional rights that the Negro child across the County line from Memphis has now achieved through petitioners' efforts. The right is simply this. He has been taken from his neighborhood school and transported across Marshall County to attend a school that is unfamiliar to him and that contains few, if any, of his close friends.

We wonder how that child feels. As the Court of Appeals noted in its *Deal* decision, if that child or his parents want him to attend that school, well and good. He should be allowed to attend the school of his choice. As Justice Black said in *Holmes County,* no child should be excluded from a school because of his race. But it just so happens that there are a vast number of the children whom petitioners purport to represent who do not desire to be transported halfway across town, to lose contact with their neighborhood and to attend an unfamiliar school. To these black children the so-called Constitutional right which petitioners obtained for them has, instead, become a burden they must bear. In the City of Memphis as this brief is being written, the District Court is conducting a hearing and the principal issue is racial balance in the Shelby County schools. Many people look at this problem in the light of the white child only and the white child, since

his parents were "racists", should be bussed across the community as a form of penance. It can only be penance because it has nothing to do with good race relations or good education.

Remarkably enough, news accounts of that trial reveal that Negroes are finally speaking up and renouncing this so-called "Constitutional right" that is not being given them but, rather, is being forced upon them. They are now appearing to express their views that they do not want their children taken from the neighborhood school. The attitude of these black parents would indicate that racial balance is as vicious and insidious in its way as racial segregation is in its way.

We refer again to the City of Houston. On December 31, 1969, in the cause *Ross v. Houston Independent School District*, Civil Action 10444, U.S.D.C., S.D. Tex., the Houston School system filed a detailed report with the Court and two aspects of that report will be of interest to this Court. First, the report reflects the approval of a Citizens Committee of Houston's "Freedom of Choice" plan. The Committee, which consisted of citizens chosen to represent *all groups* within the school district, recommended against bussing. Next, the Houston report reflects the results of a referendum of school patrons on the freedom of choice plan in the Houston District. We quote from the report:

> ". . . In the recent election a referendum was submitted to the patrons of the Houston Independent School District. It referred to the patrons the question of their support of the present freedom of choice plan. The results of the referendum are that all neighborhoods within the District, including Negro neighborhoods, overwhelmingly support freedom of choice. See Exhibit "C", pages 1 through 14.'

This Court would be interested to know that freedom of choice was approved in 332 of the polling places, while 3 precincts rejected freedom of choice. Consider for a moment the impact of such a referendum. 78,126 Negro students and 157,246 white students are enrolled in the Houston District. Yet in all but three precincts out of 335 parents supported freedom of choice. Consider what the result would have been if the question presented in the referendum had been racial balance and transportation of pupils. Can anyone say that the Constitution of the United States forces on people a so-called "right" which they do not want. We think not.

CONCLUSION

The day that discrimination was eliminated in this school system has long passed. For several years every black student in Memphis has had the right to attend the school of his choice. In fact, the emphasis has been to encourage these children to enroll in a school where the opposite race predominates.

The next era in the desegregation process in Memphis was to find other areas that could serve as a vehicle for achieving an integrated system as opposed to one that simply is free of discrimination. Voluntary faculty desegregation, school construction and the voluntary closing of schools, even over the objection of the patrons whose children attend those schools, are but a few examples of the Board's action both to achieve integration and to make integration as attractive as possible.

With the filing of the Supplemental Plan, we have entered the third era in the desegregation process. While the Board will continue these other programs, it must be recognized that the school system has no control over parents and where they move with their children. The Board

can, however, attempt to educate children to the fact that there are two races in this country which can become acquainted and must attempt to live in harmony. The Supplemental Plan will do this. Perhaps it may not produce the desired result *now* because it deals with children and not their parents.

The very least that can be said is that for the first time and after ten years of litigation, the school system has done something that initially, though only initially, received petitioners' approval (R. 372, 397). The most that can be said is that this Court has before it a board dedicated to justice and a relentless and educationally sound pursuit of the *now* result.

We respectfully ask that this Honorable Court follow a course that will announce to children, to educators, and to the country that racial balance is not the "law of the land."

Respectfully submitted,

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900 Memphis Bank Building
Memphis, Tennessee 38103
Attorneys for Respondents

GROWTH PATTERN OF CERTAIN DESEGREGATED SCHOOLS

School	1961-62		1962-63		1963-64		1964-65		1965-66		1966-67		1967-68		1968-69	
	WHITE	NEGRO	WHITE	NEGRO	WHITE	NEGRO	WHITE	NEGRO	WHITE	NEGRO	WHITE	NEGRO	WHITE	NEGRO	WHITE	NEGRO
Bruce	560	3	522	5	494	7	488	9	443	11	432	19	430	40	412	63
Gazelle	349	4	343	11	312	70	279	139	265	224	199	385	159	460	85	553
Springdale	328	2	284	8	245	51	245	94	174	205	94	246	16	341	15	414
Cordon	330	4	320	13	291	110	160	196	138	282	113	417	54	562	27	627
Peabody			420	4	428	6	446	9	444	7	460	20	453	21	431	39
Valentine			406	1	391	4	399	33	320	83	293	177	227	215	197	213
Avon					553	1	493	2	432	30	414	34	361	40	322	41
Idlewild					490	2	460	9	473	25	460	30	437	39	439	43
Maury					266	10	247	9	265	18	233	28	181	44	182	41
Pope					490	3	627	3	619	20	539	108	410	205	337	307
Sherwood					1275	14	1244	22	1157	21	1103	31	1033	24	929	30
Hollywood					371	5	193	238	82	528	17	733	5	837	--	814
Cathey Grove							455	9	367	120	315	143	275	156	230	137
Longview							870	1	592	265	184	933	50	1159	16	1290
Cathcart							436	5	434	75	355	135	355	240	173	450
Hillory Heights											259	3	194	194	112	279
White Station													420	106	341	110

Memphis City Schools

APPENDIX A1

SCHOOL	1965-66		1966-67		1967-68		1969-69	
	WHITE	NEGRO	WHITE	NEGRO	WHITE	NEGRO	WHITE	NEGRO
JUNIOR								
Bellevue	614	63	550	86	537	136	504	194
Fairview	731	55	601	89	480	76	355	121
Humes	488	462	407	582	397	1129	188	1194
Longview	440	143	199	433	44	450	18	758
White Station	726	75	788	79	834	57	756	46
SENIOR								
Central			1178	33	1084	66	1021	115
Northside					234	932	75	1240
South Side			221	426	79	1017	19	1412
Tech *			857	82	790	137	749	181
White Station			1231	52	1337	45	1397	45

* 1963-64

PROPOSED PLAN OF BOARD OF EDUCATION

Comes the Board of Education of the Memphis City Schools, defendant herein, and respectfully submits to the Court a proposed plan to aid in the establishment of better relations between the races, not only within the school system but also within the community.

Preface

The historical approach to race relations and public education has been primarily a statistical one. Attention has been focused on an individual school instead of on the school system and community. Almost uniformly the Courts, sociologists and educators examine the individual school, School A, to determine whether School A has bi-racial enrollment. If it does not have such bi-racial enrollment, reassignments are sought to achieve this objective. Too frequently, in fact almost uniformly, after the school has been satisfactorily desegregated and within a period of three to five years resegregation results with little or nothing having been achieved with respect to human and racial understanding.

The Board of Education has given full consideration to various other plans of achieving better race relations. Among some of the methods considered have been school pairing, educational parks and student bussing. Experience in other communities with these ideas, even if financing were available to undertake such programs, led the Board to conclude that a better program must be designed.

The problem presented here is two-fold. First, what can the Board of Education do in the field of human relations in the City of Memphis. Two races live in this city and they can and must live harmoniously. Further polarization between the races and residential transition

should be avoided. Equally important is the Board's obligation to give the court an alternative to the purely statistical approach that has been the polestar in the past. The Board of Education believes that the plan which it here proposes would permit the Court to set goals and objectives that are not statistical in terms of percentages and ratios but are golden objectives in terms of the human equation, human relationships, and better understanding.

Background

Under the present plan of operation the Board of Education has met with statistical success yet in this case the parties continue to litigate and many communities tend to experience racial isolation. In this community each year has seen an increase not only in the number of schools with bi-racial enrollment but also in the number of pupils attending schools with members of the opposite race. Currently 53 of the 143 schools in the system have bi-racial enrollment and more than 47,500 of the 123,000 pupils in the Memphis schools are attending these desegregated schools. It is the feeling of the Board that this has been accomplished consistent with maintaining quality education.

Faculty desegregation has increased markedly. The faculties of all but one school have been desegregated and the number of teachers involved in this process has grown at a rapid pace.

It is the intention of the Board to continue this desegregation process. For example, there shall be continued emphasis on faculty desegregation and boundary lines are studied continuously in order that the facilities of the school system will be utilized not only to the fullest but in the best possible manner from the standpoint of contribution to good instruction.

The Board of Education believes, however, that the time has come in the desegregation process to devote some of its efforts to better racial communications within the entire school system. It is time to reconsider the purely statistical approach—the approach based upon the theory that racial proximity, i.e., bi-racial enrollment in each school, is the factor that will bring about quality education. There is absolutely no empirical evidence that the mere desegregation of a classroom either adds to or detracts from the quality of education in that room. On the contrary, educators have concluded that the influence of one's peers has a greater effect on the quality of education that a student receives.

So let us begin to pledge ourselves to focusing our attention on those elements that improve instruction and that make for quality education in this system. We believe that the supplemental plan we will next describe will produce results in enabling the coming generation to better understand the contributions of other races and what is required of the other if each and all are to contribute to the growth of a community.

The Supplemental Plan

A. The Board of Education shall promptly appoint a Director of Interscholastic Activies who shall serve as a member of the Department of Instruction.

B. It shall be the responsibility of the Director to formulate plans and programs for both interscholastic and extracurricular activities, the dominant purpose of which shall be to acquaint all students in this school system with the achievements, abilities, customs, and the problems and concerns of each other.

C. Initially the Director shall formulate plans in the following areas:

1. *Principal Exchange and Visitation Program.* The present program of temporary reassignment of principals shall be expanded with emphasis on the temporary assignment of principals to schools where the predominant racial enrollment is different from that of the school to which the principal is regularly assigned.

2. *Teacher Exchange and Visitation Program.* There shall be temporary reassignment of teachers for limited periods of time to schools of different racial composition than that to which the teacher is regularly assigned.

3. *Pupil Exchange and Visitation Program.* The opportunities for gaining knowledge of and respect for opposite race can and should be afforded to pupils within this school system. As examples, exchange programs, on a racial basis, shall be started promptly in the following areas:

   a. *Vocational.* Interscholastic activities can be most diversified in this area. Exhibit days will be planned between schools and among several schools. Contests will be scheduled on the basis of quality workmanship in performing certain shop skills. Students and teachers will be exchanged for short periods of time. The various clubs in this area will have more interscholastic activities, using as a guide the existing programs in the field of Distributive Education.

   b. *Arts and Crafts.* Something similar to what has been said about the vocational would apply here. Again the emphasis must be on the interscholastic or the plan will not be effective. Art exhibits, trips to art galleries, and jointly-sponsored speakers, art club affairs and, again, student exchanges. Probably it should be said at this point that student exchanges will not have the detrimental statistical effect that we are now finding in the field of eliminating segregation.

c. *Academic Courses.* Suitable methods of pupil exchange shall be devised so that students shall have the opportunity of attending classes or expanded lecture sessions with pupils of the opposite race.

d. *Music and Debate.* Glee Clubs and Debate Teams are constantly in need of performing programs after having spent many hours of practice. Certainly a mutual respect for talent is imperative and added to this exchange would be complete tours of the school.

e. *Elementary Schools.* The foregoing programs are primarily concerned with high school activities. The opportunities for elementary exchange are no more limited than the high school program. If it makes sense for pupils in School A to take a tour of a bakery or Brooks Gallery, then certainly it makes sense to have that particular group of children know something about the education of pupils in another school in this system. Joint tours of pupils from schools of predominantly different racial makeup will be planned.

4. The Director of Interscholastic Activities shall then begin research and planning in other areas of racial communication and knowledge and submit to the Board of Education appropriate programs for its approval.

5. On or before February 1 and October 1 of the years 1969, 1970 and 1971, the Board of Education shall file a written report with the United States District Court reporting the programs undertaken and the number of pupils by race involved in each of said programs.

Conclusion

In the several instances when the school system's method of desegregation has been reviewed by the District Court, there has been specific expression by the Court that

the Board of Education was acting in good faith. At the most recent hearing of this matter, this conclusion was again stated by the Court. This supplemental plan is an effort by the Board of Education to continue to merit this attitude not just of the Court but of the entire community, that the Board is desirous of accomplishing something in the field of race relations.

This supplemental plan may well not achieve a drastic increase in statistical desegregation. It will have a drastic effect, however, in expanding knowledge and respect of all races and, with that increased knowledge and respect better relations between the races both in the community and in the school system can and will result.

Respectfully submitted,

Board of Education of the
Memphis City Schools

By .....

PROJECT: GUIDANCE IN HUMAN RELATIONSHIPS

All children need an opportunity to meet and interact *voluntarily* with children who are different by reason of race, culture, religion or nationality. If this contact is forced, the effectiveness of the relationship becomes unnatural and ineffective. Counselors share the responsibility of fostering this understanding which teaches respect for other people and stresses the unfairness of judging others without knowing enough to pass judgment or seeing out of one's own biased opinions.

As an experiment in intercultural exchange, a mutual arrangement was made between Mrs. Kate Lester, sixth grade teacher at Treadwell Elementary School, and Mrs. Larline Duncan, sixth grade teacher and chairman of the

sixth grades at Grant Elementary School. Mrs. Lester's class extended an invitation to thirty sixth graders from Grant to be their special guests for an entire school day and participate in the regular classroom activities and experiences. The students were selected by their classmates who chose them on the basis of their citizenship qualifications, since these students would represent their school and community.

Preceding this experience, an orientation period was held at each school. Teachers and counselor participated in this, making each group aware of the purpose, discussing matters of courtesy, ways of communicating, sharing, etc.

In the opinion of both principals and teachers, this was a most successful and rewarding occasion. After the first few minutes of natural tension on the part of both groups, students began identifying with each other, competing as well as cooperating, depending on the type of activity in which they were involved. At one point a "Getting to Know You" game was played, in which students were paired, given five minutes to find out as much about each other as possible and later present one's partner to the class.

By the time of the physical education period, teams were well integrated by the natural selections of the elected captains. At the snack time following this playground experience, there was much interaction among members of the group, including praise and admiration for certain children whose skills had been discovered.

A regular plate lunch was served in the cafeteria, and Mrs. Lester insisted on taking care of this expense through certain available funds, since the principal, Mr. W. A. Bickers, and she had really wanted these children as their guests.

After lunch all of the fifth grade teachers invited the children to visit their various classrooms, view their annual pioneer day exhibits, engage in group singing, games and contests. Favors were presented to the Grant children and this proved to be an exciting and stimulating part of the visit. As a final activity Mrs. Duncan led the group in the singing of "America, the Beautiful" and "God Bless America."

The Grant students, accompanied by their teacher and counselor, left at 2:30 p.m., after much protesting by all of the children that the day had passed just too fast. A chartered bus for transportation was provided by Klondike Guidance Center.

Mr. Charles Irvine, Project Supervisor, and Mr. W. T. Grimes, Supervisor of Klondike Guidance Center, both endorsed the project and visited Treadwell School during the day in order to extend their support as well as share their personal observations with counselor.

Within the next few weeks the Treadwell sixth graders will visit Grant Elementary School and spend the day as their guests. Two of the Treadwell fifth grade teachers have requested counselor to plan similar trips for their classes.

In May, two fourth grade classes from Grant will visit Richland Elementary School and be the guests of that school during their annual Art Week. Mrs. Mildred Hudsen, Richland Principal, and counselor consulted and will confirm these plans in the near future.

Louise Howser,
Counselor

LH/rs

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

DEBORAH A. NORTHCROSS, ET AL., Plaintiffs,

vs.

BOARD OF EDUCATION OF THE MEMPHIS CITY SCHOOLS, ET AL., Defendants.

Civil Action No. 3931

REVISED PLAN OF DESEGREGATION

Comes the defendant, Board of Education of the Memphis City Schools, and files this its revised plan of desegregation as directed by the written Opinion of the Court filed in this cause on the 15th day of May, 1969:

I.

Teachers and Other Professional Personnel

1. Teachers and other professional personnel will be employed solely on the basis of qualifications and without regard to race or color.

2. In the recruitment and employment of teachers and other professional personnel, all applicants and other prospective employees will be informed that the City operates a racially desegregated school system and that the teachers and other professional personnel in the system are subject to assignment in the best interest of the system and without regard to their race or color.

3. The Board of Education will make initial assignments of newly employed and transfers of presently-employed teachers to schools in which the majority of faculty members are of a race different from that of the teacher to be assigned or transferred. Such assignments and trans-

fers will be made by the Board in all of those cases in which the teachers are qualified and suitable, apart from race or color, for the position to which they are to be assigned or transferred.

4. Supervisors, principals, teachers and other faculty personnel shall be employed, promoted and assigned in furtherance of a goal of removing the racial identity of each school. An interim target for this goal shall be that at least 20 per cent of the teachers of the system will be assigned to racially minority faculty positions in the school year 1969-70. This percentage shall be systemwide and shall not necessarily require 20 per cent in each school in 1969-70.

5. Such assignments shall not be left to the choice of the teacher. No teacher shall be discharged from the system to correct a racial imbalance.

6. The Board shall have properly trained personnel conduct appropriate seminars and programs for teachers in the system to prepare all faculty personnel for desegregated faculties. In this regard the properly trained personnel may be from within or without the system, provided they are properly trained for that purpose and are dedicated to a program of desegregated faculties.

II.

Director of Race Relations

The Board shall promptly designate and appoint a Director of Race Relations who shall devote his full time to investigating and recommending to the Board ways and means of assisting the Board in its affirmative duty to convert to a unitary system in which racial discrimination will be eliminated. Particular emphasis shall be given to those schools which are not desegregated.

1. It shall be the responsibility of the Director to formulate plans and programs for both interscholastic and extracurricular activities, the dominant purpose of which shall be to acquaint all students in this school system with the achievements, abilities, customs, and the problems and concerns of each other.

2. Initially, the Director shall formulate plans in the following areas:

A. *Principal Exchange and Visitation Program.* The present program of temporary reassignment of principals shall be expanded with emphasis on the temporary assignment of principals to schools where the predominant racial enrollment is different from that of the school to which the principal is regularly assigned.

B. *Teacher Exchange and Visitation Program.* There shall be temporary reassignment of teachers for limited periods of time to schools of different racial composition than that to which the teacher is regularly assigned.

C. *Pupil Exchange and Visitation Program.* The opportunities for gaining knowledge of and respect for opposite race can and should be afforded to pupils within this school system. As examples, exchange programs on a racial basis shall be started promptly in the following areas:

(1). *Vocational.* Interscholastic activities can be most diversified in this area. Exhibit days will be planned between schools and among several schools. Contests will be scheduled on the basis of quality workmanship in performing certain shop skills. Students and teachers will be exchanged for short periods of time. The various clubs in this area will have more interscholastic activities, using as a guide the existing programs in the field of Distributive Education.

(2). *Arts and Crafts.* Art exhibits, trips to art galleries, and jointly-sponsored speakers, art club affairs and, again, student exchanges.

(3). *Academic Courses.* Suitable methods of pupil exchange shall be devised so that students shall have the opportunity of attending classes or expanded lecture sessions with pupils of the opposite race.

(4). *Music and Debate.* Glee Clubs and Debate Teams are constantly in need of performing programs after having spent many hours of practice. Certainly a mutual respect for talent is imperative and added to this exchange would be complete tours of the school.

(5). *Elementary Schools.* The foregoing programs are primarily concerned with high school activities. The opportunities for elementary exchange are not more limited than the high school program. If it makes sense for pupils in School A to take a tour of a bakery or Brooks Gallery, then certainly it makes sense to have that particular group of children know something about the education of pupils in another school in this system. Joint tours of pupils from schools of predominantly different racial makeup will be planned.

III.

Unitary School Zones

The Department of Pupil Services in conjunction with the Director of Race Relations shall review annually and, where feasible, revise those school zone boundaries where a greater degree of desegregation may be achieved. Factors to be considered in addition to more effective desegregation shall be the capacity of the schools, the location of students, the location of existing school facilities

and the safety of the students, including natural boundaries, railroad crossings and thoroughfares.

Prior to January 1, 1970, the Board will file in this cause maps showing the revised zone boundary lines and will file enrollment figures by race of the pupils actually attending the schools as of the time of the report and enrollment figures by race of the pupils who live in the proposed revised zones.

IV.

Assignment and Transfer Policies

1. *Initial Assignment.* Each student shall receive initial assignment to the school serving the student's residence. Such assignments shall be made in the month of March each year.

2. *New Students.* First grade students and students new to the system shall be assigned to the school serving the zone of their residence. A transfer form and the policies governing transfers shall be furnished to the parents of those students and they shall have ten (10) days within which to exercise the right to transfer.

3. *Right to Transfer.* Student transfers to attend any school in the system outside the student's zone of residence shall be granted without restriction so long as the physical facilities of the school to which the transfer is sought are adequate. All transfers requested by students from a zone in which they are in a racial majority to a zone in which they will be in a racial minority will be allowed regardless of residence and subject only to lack of space to a degree whereby the transfer would interfere with the educational processes.

4. *Time to Request Transfer.* Twenty (20) days shall be allowed after the receipt of the initial assignment within which transfers may be sought.

5. *Priority of Transfers in Event of Closed Schools.* In the event more transfers are sought to a school than can be accepted with the available facilities, preference shall be granted to students on the basis of proximity of residence to the school to which the transfers are sought, subject, however, to the provisions of Item 3 above.

Those students whose application for transfer has been denied because of the lack of facilities at the school to which transfer is sought shall have an additional period of ten (10) days within which to seek transfer to another school where facilities are available.

No preference will be given to students previously attending a particular school or to previous transfer students.

6. *Notice to Patrons.* Each patron of the system shall be furnished with a copy of the transfer policies of the school system at the time of the student's assignment. Said policies shall also include a transfer request form. In the event a transfer is requested, said transfer form shall be completed and signed by the parent or guardian of the student and mailed or delivered to the school or the Administration Building of the Board of Education of the Memphis City Schools.

7. *Extra Copies of the Explanatory Letter and Transfer Form.* Extra copies of the explanatory letter and transfer form shall be freely available to parents, students, prospective students, and the general public at each school in the system and at the office of the Superintendent.

8. *Transfer Applications Not on Official Form.* The exercise of transfer rights may also be made by the submission in like manner of any other writing which contains information sufficient to identify the student and indicate that he has made a choice of school.

V.

Attendance Across School System Lines

No arrangement will be made by this school system for any students living in the community it serves to attend school in another school system where the opportunity is not available to all students similarly situated without regard to race or color. No arrangement will be made by this school system for any students living in another school system to attend school in this system where the opportunity is not available to all students similarly situated without regard to race or color.

VI.

School Facilities

The Board of Education shall close Getwell School on or before the opening of school in the year 1969-1970.

New schools, additions to existing schools and the use of portable classrooms shall be programmed, planned and constructed in furtherance of the Board's affirmative duty to convert to a unitary system free from racial discrimination and in accordance with other factors such as financial limitations, location of students, age level of the students, safety of the students and other relevant non-racial factors.

VII.

Non-Discrimination in Activities

The Board shall adopt the following policy: All students enrolled in any school shall be entitled to use or participate in all services, facilities, activities and programs that may be conducted or sponsored by or affiliated with the schools free from racial discrimination. A student attending school for the first time on a desegregated basis may not be subject to any disqualifications or waiting

period for participating in activities and programs, including athletics, which might otherwise apply because he is a transfer student, provided his participation would not result in the disqualification of any team because of the rules of any regulatory association.

WHEREFORE, defendants respectfully submit this as their Revised Plan of Desegregation as directed by this Honorable Court on May 15, 1969.

Evans, Petree, Cobb & Edwards
By /s/ Jack Petree
Attorneys for Defendant, Board of Education of the Memphis City Schools

Certificate of Service

Copy of the foregoing Revised Plan of Desegregation served on Ratner, Sugarmon, Lucas and Willis, Attorneys for Plaintiffs, by forwarding said copy by United States mail, postage prepaid, addressed to said attorneys at their business address in Memphis, Tennessee, this the 9th day of June, 1969.

/s/ Jack Petree